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ABSTRACT

Designed for teachers of students in grades 7-12, this social studies infusion unit examines individual rights and responsibilities in the context of the American criminal justice system and explores the balance between individual and group rights achieved at various levels of American government. An introductory chapter outlines the program and describes effective teaching strategies that stimulate active involvement of students: directed discussions; small group activities, brainstorming, simulation, and use of resource experts. Students simulate the federal judiciary making decisions about the rights of the accused, a state assembly attempting legislative solutions to the crime problem, and a local bureaucracy allocating money to fund citizen crime control efforts. An overview, rationale, objectives, preparation requirements, teaching strategies, and discussion questions are provided for each unit. Additional instructions, discussion guides, and answers to questions are interwoven with the complete student text. (LH)

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Major Issues in American Government

THE CRIME QUESTION: RIGHTS AND RESPONSIBILITIES OF CITIZENS

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INSTRUCTOR'S MANUAL

THE CRIME QUESTION:
RIGHTS AND RESPONSIBILITIES OF CITIZENS

INSTRUCTOR'S MANUAL

Developed and written by
Coral Suter and Marshall Croddy

LAW-IN-SOCIAL STUDIES SERIES

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Introduction

A Democratic Education

A nation which draws its authority from the will of the people must make certain its people can identify and articulate their will. If democracy is to work, voters must comprehend sophisticated issues, make informed decisions, and accept the complex responsibility of social and political participation. These are learned behaviors. Only an educated electorate makes wise decisions. Democracy thrives on education.

American educators have expended much skill and imagination experimenting with effective education for citizenship. One of the most promising avenues is law-related education (LRE), a special combination of subject matter and instructional methodology. Information about the law and legal institutions is essential for citizens. In addition, LRE uses the legal system as a model to demystify other democratic institutions. Its instructional methodology stimulates involvement by modeling participatory behavior. Formal evaluations conclude that LRE programs, when properly implemented, statistically reduce delinquency. Thousands of teachers who have used LRE report increases in student motivation, learning and enthusiasm.

The advantages of LRE are obvious, but we do not educate in a perfect world. Implementing an LRE program often means a commitment to the time and expense of teacher inservice. Extra courses must be squeezed into an already over-crowded curriculum. These are difficult requirements at a time when budget cutbacks and rigid graduation requirements force the limitation of enrichment programs and the laudable demand for basic proficiencies causes continual reassessment of priorities.

Yet, civic participation is a basic proficiency. The three R's are not sufficient preparation for a democratic people. We must find a place in our curriculum to teach participation skills. The Law In Social Studies program meets this challenge.

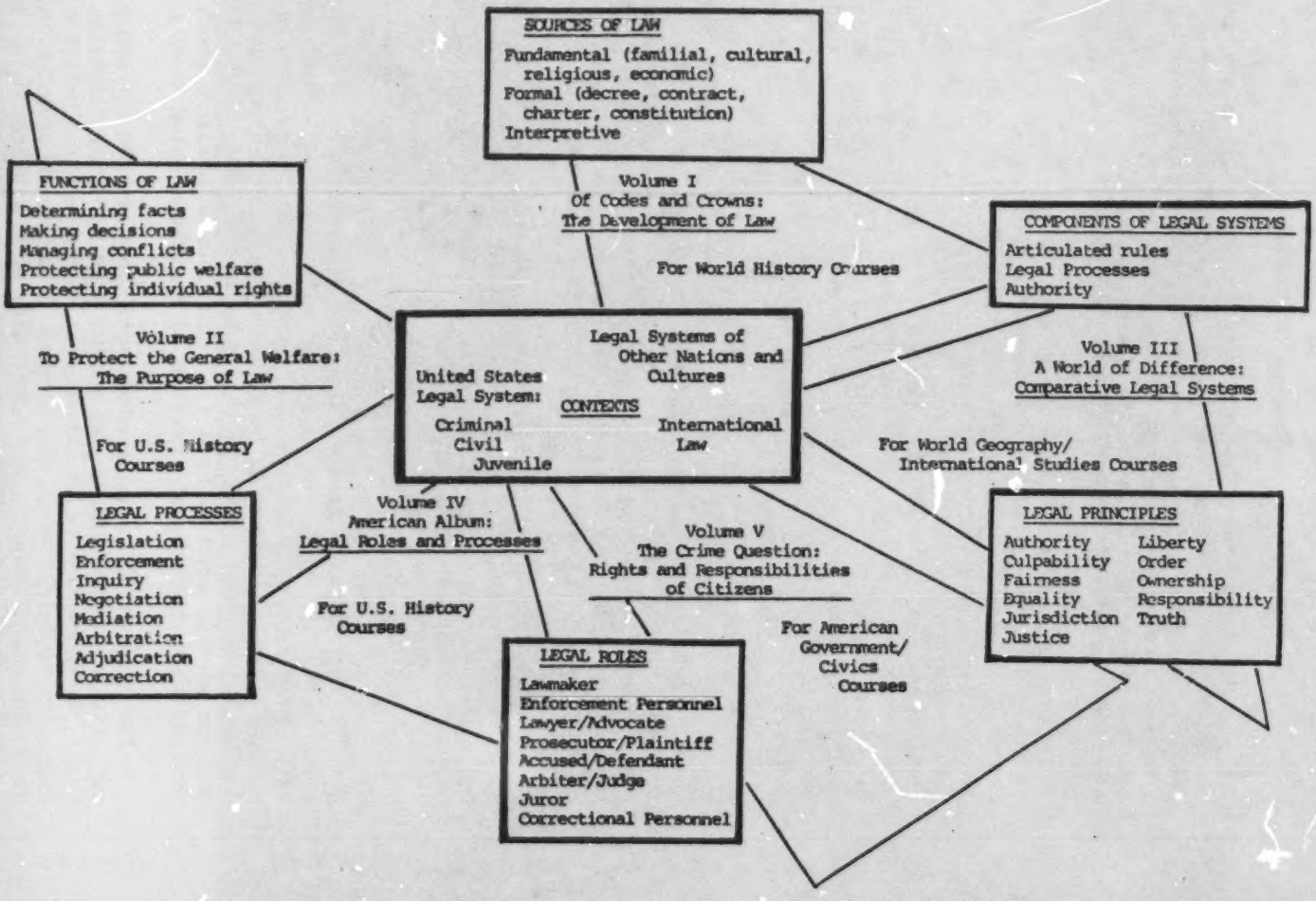
The Program

The Law-In-Social Studies (LISS) booklets are infusion materials. For example, most World History classes include a unit on ancient Greece. An LISS lesson uses study of this civilization to examine the development and purpose of legal processes. In another lesson students learn about the American Civil War and explore the balance between individual freedom and the general welfare. Each LISS unit links information about the law with standard instructional objectives of traditional social studies courses.

The approach has several advantages. Districts, schools and individuals can utilize LRE without developing an entirely separate course. Law In Social Studies relies on material with which teachers are familiar. Educators can easily tailor this program to the needs of individual classes. Most important, when taught LRE skills and attitudes in a traditional context rather than as an elective extra, students can more easily integrate what they learn with the rest of their schooling.

FRAMEWORK OF LISS LEGAL CONTENT

Law in Social Studies materials address a broad range of law-related knowledge. As this chart illustrates, each volume highlights two knowledge areas (sources, components, functions, processes, roles or principles) in the context of U.S., world or international legal structures.



Content

The field of law-related education has a vast and diverse content, skills and attitudes base. The content of LRE can be divided into six major areas:

- o The component parts of legal systems;
- o The sources of law and authority;
- o The functions or purposes of law;
- o Major legal processes;
- o Major legal roles;
- o The basic principles supporting legal systems.

Students should demonstrate an awareness of the interrelationship of these six elements in the context of several topic areas: the U.S. criminal, civil, and juvenile legal systems; other major national or cultural legal systems of the contemporary and historic worlds; and international law.

LRE provides students with consistent practice in the skills needed to:

- o Think critically. Specifically, students should learn to define problems and questions, gather relevant data, identify and weigh alternative solutions, and implement decisions.
- o Manage conflicts. Specifically, students should learn to identify causes of conflicts, identify and implement compromise positions, deal with controversy, and negotiate solutions.
- o Participate. Specifically, students should learn to work effectively in groups, form coalitions, persuade, bargain, and persevere.

LRE should help develop the following attitudes:

- o A commitment to the peaceful resolution of conflict;
- o A respect for the rights of others;
- o Self-respect;
- o Appreciation of individuality, community and diversity;
- o A mature and balanced attitude toward authority.

Form

After identifying a basic LRE content for infusion, designers worked with social studies teachers to examine the curriculum of four traditional social studies courses, grades 7 through 12, and identify points at which infusion was appropriate. Lessons were developed combining LRE information with the social studies content normally taught at each of these points.

As a result of subsequent field tests, LISS materials for each one-year course were limited to between four and six chapters or units. Most chapters can be taught in three, four or five class periods. Some are designed for consecutive classes. Others could be integrated with traditional work over an extended period.

Product

The completed Law in Social Studies program is a five-booklet series. Each supplements a standard Social Studies course: U.S. History, World History, Geography or Government. Each is printed in both a teacher and student edition. The illustrated Student Edition contains vocabulary lists, the text, discussion questions, and instructions for some activities. In the Instructor's Manual, additional instructions, discussion guides and answers to questions are interwoven with the complete student text.

The booklets focus on specific aspects of LRE knowledge. The chart on page vii illustrates the relationship between the books and the knowledge identified as the content of LRE. Each volume is briefly described below.

I. Of Codes and Crowns: The Development of Law

This booklet supplements World History classes and explores the sources of law. Set in the prehistoric period, the first unit explores the basic human need for rules. Next, students dig through Hammurabi's Code to examine the purpose of written rules. The Orestes myth introduces the tribunal of ancient Greece, an early procedure for applying rules. Students examine the development and refinement of legal processes by staging a mock trial by combat and sitting on a medieval English jury. A final unit on Renaissance Florence demonstrates the need for authority.

II. To Protect the General Welfare: The Purpose of Law

This booklet examines the purpose of law in the context of American history. An opening unit about the Iroquois nations gives an overview of the functions of a culture's legal structure. The pirates of the Louisiana Bayou illustrate an exploration of how law determines facts and establishes truth. Legal controls on individual freedom are examined in a study of Lampdin Milligan's subversive activities during the Civil War. A unit on child labor shows how law protects the public's well-being. Finally, using Prohibition as an example, the booklet raises questions about the scope and limits of law.

III. A World of Difference: Comparative Legal Systems

Issues of international law and three major legal systems operating in the contemporary world are the focus of this booklet. Representative systems - the socialistic system of the U.S.S.R.; the Islamic, theocratic system of Libya; and the Napoleonic system of Bolivia - are covered in separate chapters. Cases and issues involving young people are raised to identify the major roles and processes in each legal system, to compare philosophies and principles evidenced by the systems, and to link legal principles and structures to the resources and histories of the societies in which they flourish. The final unit simulates an international legal conference attempting to resolve human rights violations. The booklet is designed for infusion into World Geography, Area Studies, and International Issues courses.

IV. American Album: Legal Roles and Processes

This booklet focuses on six key issues portraying roles and processes of the U.S. legal system. The debate over adding a Bill of Rights to the Constitution illustrates legislation and legislators. Dorothea Dix's struggle for reform explores American corrections. Dred Scott's pursuit of free status demonstrates civil litigation and the appeals process. Other units look at the work of judges in the western territories; August Vollmer, an important police reformer; and Clarence Darrow. In addition to other LRE strategies, the booklet includes discussions and activities with resource experts, on-site or in the field, to bridge the gap between history and the contemporary world.

V. The Crime Question: Rights and Responsibilities of Citizens

Information about government and civics provides a stage for the examination of violent crime in America. An introductory chapter establishes how crime control is constitutionally assigned to each branch of government. The three remaining chapters illustrate each branch in action. Students simulate the federal judiciary making decisions about the rights of the accused, a state assembly attempting legislative solutions to the crime problem, and a local bureaucracy allocating money to fund citizen crime control efforts. Each chapter includes an exercise to link classroom activities to the community.

Classroom Strategies

Law-related education and the LISS materials stimulate the active involvement of students by using methodologies which stress participation. Here is a brief overview of the major types of activity you will encounter.

Handling Controversy

These materials address basic principles like equality, justice, authority and freedom. There are always arguments over the application of principles to actual situations. Disagreement is a real, indeed necessary, phenomenon. Controversy cannot and should not be avoided.

When a controversy becomes apparent in your classroom, clarify the nature of the disagreement.

- Identify the issue or issues under dispute.
- Identify areas of agreement and disagreement.
- Identify underlying assumptions.
- Make sure students concretely define terms and avoid slogans.

This process of definition may bring the subject to closure. If not, use an appropriate strategy for addressing the controversy such as a discussion, research, formal debate, an anonymous writing assignment, private or public mediation, or a forced perspective activity in which students must argue an issue from the "other" side. Note that some of these activities can be prepared or completed outside of class without serious disruption of your schedule.

Whatever strategy you use, be sure students follow certain ground rules.

- o They must argue ideas, not personalities.
- o They must represent the opposing position(s) fairly and accurately.
- o They should demonstrate an attempt to understand the opposing perspective(s).
- o They should admit doubts and weaknesses in their own position.
- o Above all, the argument should concentrate on evidence.

Students should look for a chance to air their own views, hear their opponents' views and examine both. Be sure students understand that closure of a controversy does not mean one side wins.

Directed Discussions

The LISS material is frequently interrupted by discussion questions. Some check student comprehension of words or concepts. Others ask students to infer, compare, analyze, synthesize, hypothesize or evaluate information. Discussion of questions in this latter category is critical to a lesson's progress. Many times, activities are based on information raised in these discussions.

For your convenience, answers to all questions have been included in the Instructor's Manual. The information in many of these sections goes beyond that which is included in the reading or activity being discussed. This additional information can guide your class discussion or be used as the basis for an independent lecture. The Instructor's Manual also identifies significant points to be raised in discussions.

When a question asks for personal opinion, encourage students to:

- o Clearly state their opinion.
- o Support it with facts, logical arguments and/or reference to parallel situations and circumstances.
- o Clearly define the terms they use.

This will give students practice in forming opinions which can be communicated. It will also develop criteria by which students can judge the opinions of others.

Small Group Activities

Small group work gives students practice in communication, cooperation, persuasion, bargaining and compromise. To maximize student participation in small group activities:

- o Give students a specific objective. Then give clear instructions for meeting that objective.
- o Limit your instructions to the task at hand. If students are unfamiliar with small group work, divide the activity into several segments, each with its own objective. Give groups instructions for completing the first task. When that objective has been accomplished, proceed to the second task and so forth.

- o Check students' comprehension of their instructions and goals before each segment of the activity.
- o Circulate to monitor each group's progress throughout the activity.
- o Hold all students accountable for their groups' decisions and actions. If a student disagrees with a group decision, point out constructive ways he or she could and should have altered it.

Brainstorming

Brainstorming has a specific purpose and specific rules. It is intended to generate ideas. It works by separating the process of generating ideas from the processes of discrimination and judgment. Typically, a group of brainstormers is given a clearly stated question. Within a limited time, they are told to think of and write down the greatest possible number of answers. The key is quantity not quality of ideas. The time pressure short-circuits judgment: if they are to compile a long list, brainstormers have no time to judge ideas.

Brainstorming should be followed by a debriefing discussion or another small group activity in which the evaluation or use of ideas becomes the prime focus. The group is asked to discuss the answers on its list and, using specific criteria, evaluate them. When preparing a group for brainstorming, be sure they distinguish between the idea-generating part of the activity and the evaluation which follows it.

Simulations and Role-Playing

Many LISS lessons focus on the processes by which laws are applied and legal decisions are made. Often, the most effective method of teaching about these processes is to simulate them, thus forcing students to take a perspective on the process they are experiencing.

Although the LISS simulations vary, a few general rules should be observed:

- o Be sure students clearly understand their instructions and roles before beginning the activity.
- o If you have no assigned role, monitor student participation. (In some cases, the teacher is assigned a pivotal role which can, of course, be filled by a properly prepared student.)
- o Debriefing is the most important element of simulations. The debriefing questions identified in the materials are meant to explore the lesson's content and further the lesson's goals. Give your students an opportunity to raise and discuss additional questions generated by the simulation. Debriefing is also an excellent time to address the issue of non-participation.

Resource Experts

Classroom visits from informed professionals can be a valuable teaching tool. Resource experts serve as role models and make community institutions more familiar. Some LISS units rely on resource experts; others can benefit from them. For instance, visits from people who have lived or conducted business in appropriate countries can highlight units on international law and comparative legal systems.

Identifying experts and arranging visits is not difficult. The public information offices of local or state law enforcement agencies, the courts and bar associations are good sources for contacting people from the justice system. The Chamber of Commerce, Better Business Bureau, professional organizations and unions can connect you with speakers from business, industry, and labor. Politicians' constituent service offices can identify appropriate speakers from government institutions. Finally, use the faculty of your local college or university.

When you contact an appropriate individual to make arrangements, be sure to:

- Explain the purpose of the visit. Briefly describe your objectives for the guest's presentation.
- Place the visit in context. Explain the class's current field of study, your planned follow-up activities, etc.
- Describe the audience. Tell the speaker how many students will be present and briefly characterize their age, interests, and achievement levels.
- Specify the scope of the presentation, both in time and content. Be sure this reflects the grade level, maturity, and attention span of your class.
- Request specific dates and times. Suggest two or three alternatives from which your guest can choose. (Many speakers require at least three weeks' notice.)
- Be sure the visitor has the correct address, appropriate directions and knows where to park.

After arranging the visit, confirm it with the principal and other appropriate personnel. It is probably wise to get a final confirmation from the resource expert a few days before the presentation.

To make the visit most effective:

- Prepare the class. Discuss the purpose of the visit and provide basic information about the speaker. Having the class compile a list of questions to ask the expert is a useful activity.
- Remember that resource experts are <u>not</u> trained teachers. During the presentation, you will need to direct both the speaker and the class with appropriate questions or other clues.
- Allow sufficient time at the close of the class for a summary of the presentation and a thank-you to the guest. Thank-you letters give speakers a particular satisfaction and students a good language arts experience.
- In addition to the debriefing questions noted in the LISS materials, ask students to comment on what they learned from the experience and how it influenced their views about the speaker's profession or topic. Encourage their constructive suggestions for improving such experiences.

THE CRIME QUESTION: RIGHTS AND RESPONSIBILITIES OF CITIZENS

This booklet was designed for infusion into Government and Civics courses. Its goals are:

- To examine individual rights and responsibilities in the context of the American criminal justice system.
- To explore the balance between individual and group rights achieved at various levels of American government.

In the initial Unit One activity, students search newspapers and magazines for evidence of an American crime problem. Discussion and further reading provide an appropriate context for student discoveries. Next, students examine the Constitution to locate provisions relevant to criminal law and procedure. After reading about the responsibility for crime control assigned to each branch of government, teams of students develop and challenge each other with quiz questions based on the text and activities.

Unit One objectives include student ability to:

1. Define the following terms:
   a. crime
   b. felony
   c. misdemeanor
   d. statute
   e. precedent
   f. judicial review
2. Describe at least one way in which each branch of our federal government influences our criminal laws.
3. With reference to the lesson's activities, identify at least one way in which individual participation in group activities benefits both the individual and the group.

Unit Two explores the judicial branch at the federal level. It begins with a survey activity in which students assess community opinion about the rights of accused persons. After discussing the origin and history of several such rights, students focus on the exclusionary rule. During "On Appeal," a court simulation, students apply their opinions about the rule, its costs and its benefits to an actual Supreme Court case, Davis v. Mississippi.

After completing Unit Two, students will be able to:

1. Recall and describe at least three rights guaranteed to persons accused of crime in the United States.
2. Recall at least one argument supporting use of the exclusionary rule in American courts and at least one argument against use of the rule.

3. State a personal opinion about whether or not the exclusionary rule should have been applied in Davis v. Mississippi and support that opinion by referring to at least two facts from the case.

In Unit Three, students examine the legislative branch at the state level. Working in teams, they plan and execute interviews with community members involved in the criminal justice system about causes of and solutions to the crime problem. After sharing the results of their interviews, students role play a state legislature's response to pending anti-crime legislation. While modeling both committee and "on-the-floor" procedures, students must integrate their own opinions with those of their constituents and other legislators. A debriefing discussion addresses the nature of representative responsibility.

Unit Three objectives include student ability to:

1. Recall the major steps in the legislative process.

2. With reference to the opinions of community officials, describe at least two causes of and two solutions to the crime problem.

3. State and defend a personal opinion about whether or not individual rights should be restricted to preserve the public welfare.

A classroom visit from a law enforcement officer raises Unit Four's primary issue: appropriate citizen participation in crime control. To understand the workings of the executive branch at the local level, students analyze a hypothetical community's crime problem and assess several different proposals intended to involve the community in solutions to that problem. A role play in which students informally lobby for the proposal of their choice completes the unit.

Unit Four objectives include student ability to:

1. Recall and describe a minimum of three actions that citizens working individually or in groups can take to reduce crime in their communities.

2. Identify and describe at least one factor which should be considered when allocating government money for a proposal or program.

3. State and defend a personal opinion about the best way citizens can involve themselves in crime-fighting efforts in their communities.

All teacher instructions in THE CRIME QUESTION are printed in **bold face type.** Page numbers mentioned in the text refer to the Student Edition unless immediately followed by the letters IM.

Vocabulary

affluent	(adj)	Rich, abundant, copious.
allocation	(n)	Something, often a sum of money, which has been allotted, budgeted or set aside for a special purpose.
constituent	(n)	Something which is a part or component of a whole; someone represented by another person. The citizens who live in the territory a senator or congressperson represents are his or her constituents.
crime	(n)	An act committed in violation of a law forbidding it, or omitted in violation of a law requiring it, for which punishment is imposed upon conviction.
dichotomy	(n)	A division into two opposing or contradicting parts.
disparage	(v)	To insult or slight; to make light of; to belittle.
exclusionary rule	(n)	A rule established by judicial precedent which states that illegally obtained evidence is not admissible in court.
felony	(n)	A serious crime usually punished by one or more years of imprisonment in a state or federal penitentiary.
habeas corpus, writ of	(n)	A court order which requires a jailer or law enforcement officer to release a prisoner because the court has found that the prisoner is being illegally detained.
inalienable	(adj)	Non-transferable, unchangeable, incapable of being handed over to the ownership of someone else.
judicial review	(n)	A process by which the judicial branch of government (the courts) decides whether or not the actions of the other two branches are lawful.
jurisdiction	(n)	The range or extent of authority, power and control.
law	(n)	A rule established by authority, by society or by custom.
lobby	(n)	A group of private citizens who try to influence legislative or executive decisions.
	(v)	To attempt to influence government decisions.
Miranda warning	(n)	A statement about the rights of persons accused of crimes which police must read to suspects at the time of arrest.

misdemeanor	(n)	A crime less serious than a felony, usually punished by a fine or by imprisonment for up to one year in a city or county jail.
penal	(adj)	Subject to punishment. A penal code is a list of laws which define crimes.
placid	(adj)	Calm, quiet, undisturbed.
precedent	(n)	An act which sets an example. A judicial precedent is a decision made by one judge which sets an example for other judges who are deciding similar cases.
presumption	(n)	A fact, idea or theory which is assumed to be true in the absence of evidence to the contrary.
probable cause	(n)	In the U.S., a person cannot be arrested without probable cause that he or she was involved in a crime. According to the Supreme Court, probable cause for arrest exists where "the facts and circumstances within the officers' knowledge and of which they had reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief" that a crime has been or is being committed.
referendum	(n)	The submission of a proposed law or measure to direct vote by the citizens.
relevant	(adj)	Pertinent, appropriate, related to the subject at hand.
respondent	(n)	One who answers or responds.
sanction	(n)	A penalty which is intended to insure or force compliance with a law or conformity with a standard of behavior.
statute	(n)	A written law; a law which has been approved by a society's law-making power.
taint	(v)	To corrupt, to infect, to tinge with dishonor.
warrant	(n)	A court order which enables a law enforcement officer to search an area, to seize property, to arrest a person, or to enforce a court judgment.
writ	(n)	Any number of written orders from a judge or a court.

Unit 1

Crime and the Citizen

Overview

Lesson 1: Student Edition, page 4; Instructor's Manual, page 4

"Something's Happening Here"--Current event activity which introduces the subject of violent crime
"Violent Crime in America"--Reading and discussion about crime and civic responsibility

Lesson 2: Student Edition, page 6; Instructor's Manual, page 10

"Crime and the Constitution"--Class discussion of constitutional provisions relating to criminal law and process
"Crime and the Government"--Reading which relates the three branches of government to criminal law and process
"Who's Got the Power"--Chart

Lesson 3: Student Edition, page 8; Instructor's Manual, page 16

"The People's Quiz"--Small group activity

Purpose

This unit was designed to complement introductions to American government, political science and/or civics courses. Its goals are:

- To introduce the basic vocabulary and concepts necessary to an understanding of American criminal law;
- To identify each branch of the federal government's functions and responsibilities within the criminal justice system;
- To explore the importance of citizen participation in government.

Objectives

After completing Unit 1, students will be able to:

1. Define the following terms:
   a. crime
   b. felony
   c. misdemeanor
   d. statute
   e. precedent
   f. judicial review
2. Describe at least one way in which each branch of our federal government influences our criminal laws.
3. With reference to the lesson's activities, identify at least one way in which individual participation in group activities benefits both the individual and the group.

Preparation

- o You will need:
  - o Several recent newspapers for use during initial activity.
  - o Sufficient copies of THE CRIME QUESTION, Student Edition, for distribution to your class.

LESSON ONE

For the initial activity in this lesson, you will need several different issues of recent newspapers and news magazines. If possible, use at least three different publications. Large city papers can be split into sections so groups can accomplish their assignment within reasonable time limits. Begin the lesson by dividing the class into small groups and distributing a different publication, issue or section to each group. Ask students to read "Something's Happening Here," page 4, and complete the activity described in that text.

Something's Happening Here

Your teacher has given you a copy of a recent newspaper. Working with the others in your group, skim the paper and cut or tear out anything you can find in it about crime. Look for articles, features, editorials and news photos, but don't ignore the cartoons and advertisements. Even the movie and book reviews may be about crime.

When your search is complete, assign each clipping to one of these four categories: Violent Crime, Non-violent Crime, Crime and Society, and Prevention and Protection. Some items may belong in more than one category. If a clipping does not fit into any of these groups, create a new category for it. When all items have been classified, note the total number in each category.

Discuss the following questions with your class:

1. What percent of your newspaper's space is devoted to crime-related issues? (Hint: estimate from the holes.) How does the amount of coverage vary in different papers? From issue to issue? From section to section? Why might such differences exist?

   - o **Note and discuss any differences in amount of crime coverage identified by the groups.**
   - o **In many papers, articles about crime are concentrated in the local and national news sections. Be sure students identified crime-related content in the other sections: stories about embezzlement, fraud, shoplifting, or white-collar crime and ads for security devices in the business section; lists of tourist safety measures and notes comparing the security of vacation spots in the travel section; etc. The information about books, plays and movies in the entertainment section is a rich resource. In fact, students could probably pull a dozen appropriate clippings from the evening T.V. log.**

- **Some publications stress crime-related issues. Others do not. Students should discuss the reasons for such editorial choices, noting the need to gear a publication to the tastes and interests of its specific audience.**

2. Why do you think the media pays so much attention to crime? Do you think it pays too much attention? Is crime as important as economics, international relations or other public issues which sometimes receive less coverage? Explain your opinion.

   - **Be sure students refer to T.V. and other media as well as the publications they've examined.**

   - **A major reason why the media highlights crime coverage is public interest in the subject. Students should also note that "the crime problem," in and of itself, is a significant public policy issue.**

   - **On the other hand, some students may feel that the media's attention to crime and criminals only exacerbates the problem or that excessive coverage of bizarre criminal activities is used to sell papers and raise ratings at the expense of more important information.**

3. Add up the number of clippings the class assigned to each of the four categories. Which received the most attention? Which received the least? Do you agree with this focus? Why or why not?

   - **Total the clippings assigned to the various categories. Identify and discuss the contents of any additional categories students created. If there are major discrepancies in the groups' allocation to categories (for instance, if one group put most of its clippings in Violent Crime but the other groups distributed items more evenly), discuss possible causes, including the source of the clippings and the students' criteria for selecting items.**

   - **Assist student assessment of the balance of coverage by asking how each category provides useful information to the public, which category seems the most interesting, etc.**

4. While searching the newspaper, you read about a number of different crimes. What were they? Working with the rest of your class, see how many crimes you can name in the next three minutes.

   - **Conduct a brainstorming activity to answer this question. Appoint one student to compile a list on the board as crimes are called out by the rest of the class.**

   - **A partial list of crimes includes:**

Arson	**Forgery**	**Fraud**
Simple assault	**Counterfeiting**	**Embezzlement**
Aggravated assault	**Illegal gambling**	**Carrying/possessing weapons**
Vandalism	**Sexual molestation**	**Buying/selling stolen property**
Prostitution	**Drug trafficking**	**Driving under the influence**
Drug abuse	**Public drunkenness**	**Breaking curfew/loitering**

Vagrancy	**Child/spouse abuse**	**Running away (juveniles only)**
Murder	**Rape**	**Robbery**
Espionage	**Treason**	**Burglary**
Theft	**Larceny**	

5. What makes a specific action a crime? Review the list of crimes you brainstormed. What do these actions have in common?

   - **Society has reached consensus (though not necessarily unanimous agreement) that these activities are wrong, bad, dangerous, a threat to the general welfare, etc.**
   - **All these actions are prohibited by law.**
   - **Again by law, people who are convicted of committing these actions are punished.**

Have students read the following section of text, "Violent Crime in America," which identifies these latter two points as the specific definition of crime.

Violent Crime in America

As you've probably discovered by now, everybody holds a slightly different opinion about what's right and what's wrong. To live together, we've had to make agreements on the subject. For instance, most of us agree that killing another person is wrong. However, this agreement alone doesn't make murder criminal. Murder is a crime because we've formalized our agreement and passed a law forbidding it.

A crime is "an act committed or omitted in violation of a law forbidding or commanding it, and for which punishment is imposed upon conviction."

Two simple things, in other words, separate crimes from other kinds of activities. Neither of these things is necessarily connected to our attitudes about right and wrong. A crime is a crime because (1) it is against the law and (2) it is punishable. If there were no laws to define crimes and set punishments, there wouldn't be any crimes. In a sense, laws create crimes.

American laws define different levels of criminal activity. More serious crimes are called felonies and are usually punished with heavy monetary fines and/or federal prison terms. Misdemeanors are less serious offenses punished by smaller fines and periods of incarceration in local or county jails. Infractions, such as traffic violations or jaywalking, are the least serious level of criminal offense and are usually punished by small fines.

Because crimes are determined by law and different laws govern different areas, whether a given crime is a felony or a misdemeanor may depend on where it is committed. Possession of a handgun, for instance, might be a felony in one jurisdiction, a misdemeanor in the next, and completely legal in a third. However, crimes like murder and rape are considered felonies all across the country.

When the Federal Bureau of Investigation began keeping national crime records in 1930, it identified seven serious and common crimes to use as an index. With data about these crimes collected from law enforcement agencies throughout the nation, the F.B.I. calculates our country's crime rate and evaluates trends in criminal activity.

Three of the Index crimes are offenses against property.

- Burglary is "the unlawful entry of a structure to commit a felony or theft."
- Larceny or theft is the "unlawful taking, carrying, leading or riding away of any property from the possession of another."
- Motor vehicle theft is the third property crime in the Index.

Though the F.B.I. considers these crimes serious enough to include in its Index, they are not "violent" crimes. Violent crimes involve "direct or implied force against a human being." (Crimes which destroy property are not technically defined as violent, though much violence may be used in their perpetration.) The violent crimes are:

- Robbery--"the taking or attempting to take anything of value from the care, custody or control of a person or persons by force or threat of force or violence and/or putting the victim in fear." (Note that robbery is theft with force.)
- Aggravated Assault--"an unlawful attack by one person upon another for the purpose of inflicting severe or aggravated bodily injury, usually accompanied by the use of a weapon or by means likely to produce death or great bodily harm."
- Rape--"the carnal knowledge of a female forcibly and against her will."
- Murder--"the willful, non-negligent killing of one human being by another." (If one person is killed because another is negligent or careless, that does not technically constitute murder.)

Each year, the F.B.I. publishes its findings in a Uniform Crime Report. According to the Report for 1982, Americans committed these four violent crimes at the rate of one every 25 seconds. Someone was beaten every 49 seconds. Someone was robbed once a minute. About two people were murdered each hour.

Clearly, we have a crime problem. What are we going to do about it? There is no one answer to this question. Everybody has a different opinion about every aspect of crime. Is it a large or small problem? Is it getting better or worse? Is it more or less important than other problems such as unemployment and national defense? What's causing the problem? Who should solve it?

The United States is not a direct democracy. When questions like these arise, we don't all rush to the marketplace, argue about the issue and cast our separate votes. Instead, we practice indirect or representative democracy. We the people have handed the power of our

government over to representatives. When problems arise, we expect our representatives to ask and answer the appropriate questions and solve the problems through legislation and governmental action.

We sometimes put our representatives in a double-bind. We threaten to remove them from their jobs if they don't obey our will. At the same time, we're often unclear about the nature of our will. In the first place, the will of the people is made up of all our different opinions. In addition, we tend to avoid political involvement. For example, less than 50% of the eligible American electorate regularly votes.

If democracy is to succeed, however, our participation is crucial. We all ought to vote. We ought to give money and time to the candidates we believe in and watch them carefully after they're elected. We should make our views known and work hard to promote the causes we think are just.

Applied to the violent crime problem, participation translates into neighborhood watches and cooperation with the police. We ought to remove criminal opportunity by marking and locking up our belongings. We ought to report suspected criminal activity, serve on juries, take time off work to testify if it's necessary. Most important, we should show our respect for the law by refusing to break it, even in petty ways.

In practice, lectures on the importance of participation are often forgotten. This is especially true when we're faced with a complicated problem like violent crime. It becomes tempting to lay most of the burden for solving such problems squarely on the government's shoulders. After all, they're the people who are supposed to take care of us! Before you succumb to this temptation, take a clear look at what each branch of the government can and cannot do about crime.

Discuss the following questions with your class:

1. What is the difference between a felony and a misdemeanor?

   - **A felony is a serious crime, usually punished by more than one year of incarceration in a state or federal prison.**

   - **A misdemeanor is a less serious crime, usually punished by a fine and/or a short period of incarceration in a city or county jail.**

2. The F.B.I. defines a violent crime as one which involves "direct or implied force against a human being." Did you use this same definition during the "Something's Happening Here" activity? If not, what definition did you use? Do you think the F.B.I.'s definition is correct or do you prefer another? Why?

   - **In common usage, violent crimes are those which damage or destroy persons or property, usually involving excessive physical force or abuse. For example, arson and vandalism may be referred to as violent crimes. This usage distinguishes such crimes from embezzlement, fraud, forgery, fencing stolen property and the like, and from the supposedly victimless crimes such as drug abuse and prostitution. Students may well have used this common definition during the activity.**

- o During this discussion, students should compare and contrast the two definitions. Which seems more correct? More useful? The F.B.I., for instance, does not place crimes against animals in the violent category. Would students agree? Students might also consider the question of crimes like defacing religious property, cross-burnings and vandalism aimed at specific ethnic groups. Though, on the face, such crimes only affect property, they are obviously aimed at intimidating persons. Would students consider these acts crimes of violence?

3. If you were a Senator, how would you find out what the American public thinks should be done to solve our crime problem?

   - o Consult surveys and public opinion polls.
   - o Follow reports in the press, letters to the editor.
   - o Keep tabs on public protests, demonstrations, letters from constituents.
   - o Call up constituents and ask their opinions.
   - o Consult advisors, experts.
   - o Listen to special interest groups.

4. Newspapers, T.V. stations, the government and professional pollsters seem constantly to be taking surveys to find out what the people really think about specific issues. Do you think these surveys accurately reflect public opinion? Why or why not?

   - o The validity of a survey depends primarily on:
     - o The neutrality of the polling organization. Both the people who write the questions and the people who ask the questions heavily influence the results of the poll.
     - o The accuracy of the sample population. If the respondents aren't an accurate cross-section of the population, the response won't really reflect true public opinion.
   - o In addition, students should note that polls and surveys generate an immediate response. People might change their minds after careful thought or exposure to other information.

5. Some of what passes for public opinion is actually the strongly felt opinion of small but vocal groups which have been aroused enough about an issue to get involved. Such groups write letters, pressure the media, contribute to campaign funds, or otherwise bring their positions to the attention of government officials. Do you think it's fair for these minority views to receive so much attention? Why or why not?

   - o No, they're giving government officials incorrect information; they're presenting their own views as the majority views; all

groups of people don't have equal time, money and access to government officials to compete with special interest lobbies.

- o Yes, if citizens are motivated enough to take the time and energy to make their views known, they ought to be rewarded with special attention; everybody has the same opportunity to become politically active.

- o Students should understand that special interest pressures, like it or not, are as much a part of the American political scene as the ballot and as important a part. The ballot gives each citizen a chance to provide general feedback and direction; special interest action gives citizens a chance to influence specific decisions the government makes.

6. Since laws provide the basis for defining crime and the Constitution provides the basis for American legislation, that document seems a likely place to begin digging for the roots of American criminal law. Read through the Constitution including the Amendments. Make a list, by Article and Section, of all the specific statements it makes about crime, persons accused of crime and criminal processes.

   - o Assign this question as homework. Answers are discussed in Lesson Two.

LESSON TWO

Begin this lesson by discussing the following questions.

Crime and the Constitution

1. In what Sections and Amendments does the Constitution refer to crime?

   - o Article I, Section 8: Gives Congress power to punish counterfeiting; to establish tribunals inferior to the Supreme Court; to punish piracies, felonies committed on the high seas and crimes against the law of nations; and to legislate, as necessary, to execute the government's prescribed power.

   - o Article I, Section 9: Forbids illegal detention, bills of attainder (laws which pronounce specific people guilty of crimes), or ex post facto laws (laws which make acts guilty after they've been committed).

   - o Article II, Section 3: Defines the President's responsibility to "take care that the laws be faithfully executed."

   - o Article III, Section 2: Defines responsibility of federal judiciary to resolve certain criminal controversies. Mandates trial by jury and trial in state where crime was committed.

   - o Article III, Section 3: Defines the crime of treason.

- o Amendment 4: Forbids unreasonable searches and seizures and allows for warrants only upon probable cause.

- o Amendment 5: Mandates indictment by Grand Jury, and forbids double jeopardy, self-incrimination, and punishment without due process.

- o Amendment 6: Guarantees speedy and public trial, impartial jury of peers, cross examination of witnesses, assistance of counsel, ability to subpoena witnesses and right to be informed of charges and evidence.

- o Amendment 8: Forbids excessive bail and fines, and cruel or unusual punishment.

- o Amendment 14: Prevents states from denying due process and equal protection under the law.

2. The Constitution gives a precise definition of only one crime. What crime is it? How is it defined?

   - o The crime is treason.

   - o Treason is defined as an overt action by which a person either levies war against the U.S. or adheres to U.S. enemies, giving them aid and comfort. Moreover, a person can only be convicted of treason if he or she confesses to such an action in open court, or if two witnesses testify that the person committed the action.

3. Though this is the only crime defined in the Constitution, it's obviously not the only crime committed in the U.S. Since an action is only a crime if it's against the law, there must be other American laws, besides the Constitution, that specifically describe all those actions people are being locked up for committing. Where do you think these other laws are written down? Who do you think writes them?

   - o Most of the American laws which define criminal behaviors and mandate punishments are to be found in state penal codes, written and passed by state legislative bodies.

   - o Cities and counties, through their legislative bodies, also pass and compile laws which define crimes. Local legislation is usually limited to ordinances which define misdemeanors.

   - o In addition, the federal Congress is empowered by the Constitution to pass criminal legislation, including a federal penal code. (This is described more fully in the next reading assignment.)

After completing this discussion, have students read "Crime and the Government," pages 6-8.

The Legislature

The Constitution explains how the United States is governed. It divides the power of government into three distinct branches and then carefully describes the responsibilities and prerogatives of each. Though each has specific duties, all branches must work together to control a problem as important as crime.

The powers of the Senate and House of Representatives are listed in Article I, Section 8. So it can "carry into execution its powers, and all other powers vested by the Constitution in the government of the United States or in any department or officer thereof," the final clause of Section 8 gives Congress the power to make laws, including all those which define crimes.

Over the years, Congress has used this clause to pass innumerable criminal statutes. Some of these laws support specific powers given to Congress in other parts of Section 8. For example, Congress controls America's postal services, mints, revenues and taxes. To assist with these functions, Congress made actions like tampering with the mail and counterfeiting coins criminal. It created crimes such as espionage in support of its war powers. It used the commerce clause to declare interstate transportation of stolen goods and kidnapped people illegal.

Though the crimes listed above are illegal throughout America, Congress does not have power to establish a uniform penal code for the whole country. The Constitution gives each individual state the right to define most criminal activity within its jurisdiction. However, a complete federal penal code exists to control crime in federally governed territory. Such areas include the District of Columbia, federal forests, military bases, post offices, federal courts and ships at sea or airplanes aloft.

The nature of a crime and where it was committed determine whether federal law applies. For example, John walks up to Sam on a street in Wichita and shoots him. Sam dies. John has committed murder and will be tried under the Kansas State Penal Code.

Let's say Sam is a postal worker making his rounds when John shoots him. In this case, John will be tried for two separate crimes: murder under state law and the federal crime of assaulting a federal employee.

Let's say John shoots Sam in the post office, not the street. Though the post office is on Kansas soil, it belongs to the federal government. Since state law does not apply, John will be tried according to the murder statues of the federal penal code.

The Executive Branch

Congress makes federal laws; the President enforces them. Again the Constitution, in Article II, Section 3, establishes this responsibility. The President, of course, lacks the time to exercise this power personally. Instead, he or she supervises the Attorney General and the Department of Justice.

The chart on page 7 (page 14 IM) shows the Justice Department's many divisions. You'll note the Marshal Service, the Drug Enforcement Administration and the Department's most famous arm, the Federal Bureau of Investigation. You'll also note that many of the Department's agencies enforce civil, rather than criminal, law. Civil laws define the rights and responsibilities that people and organizations must respect when dealing with each other. They regulate such relationships as marriages, contracts and business arrangements.

Though they are definitely illegal, actions which violate the civil law are not really crimes. In order to create a crime, remember, a law must both describe the illegal act and impose a punishment. True, people who lose civil lawsuits are usually required to pay money to the winning party. These payments, however, are not considered punishments. Instead, they are an attempt to compensate one party for trouble caused by the other.

Punitive ("punishing") damages are, in some ways, an exception to this rule. When a civil case involves serious misbehavior like fraud or deceit, a judge may insist that the loser pay more money than the actual cost of the winner's loss. This additional fine is meant to deter the losing party from committing such misbehavior in the future. Punitive damages, however, are left to the judge's discretion. They are not usually established by statute.

Civil and criminal laws are also prosecuted differently. In our legal system, only the government prosecutes people accused of crimes. But anyone who has been injured by a violation of the civil law--a private citizen, a business, or the government--can pursue the offender. Criminal fines are paid directly to the government. Civil damages are paid to the party whose rights were violated. Damages are only paid to the government if it is the victorious party in a civil suit.

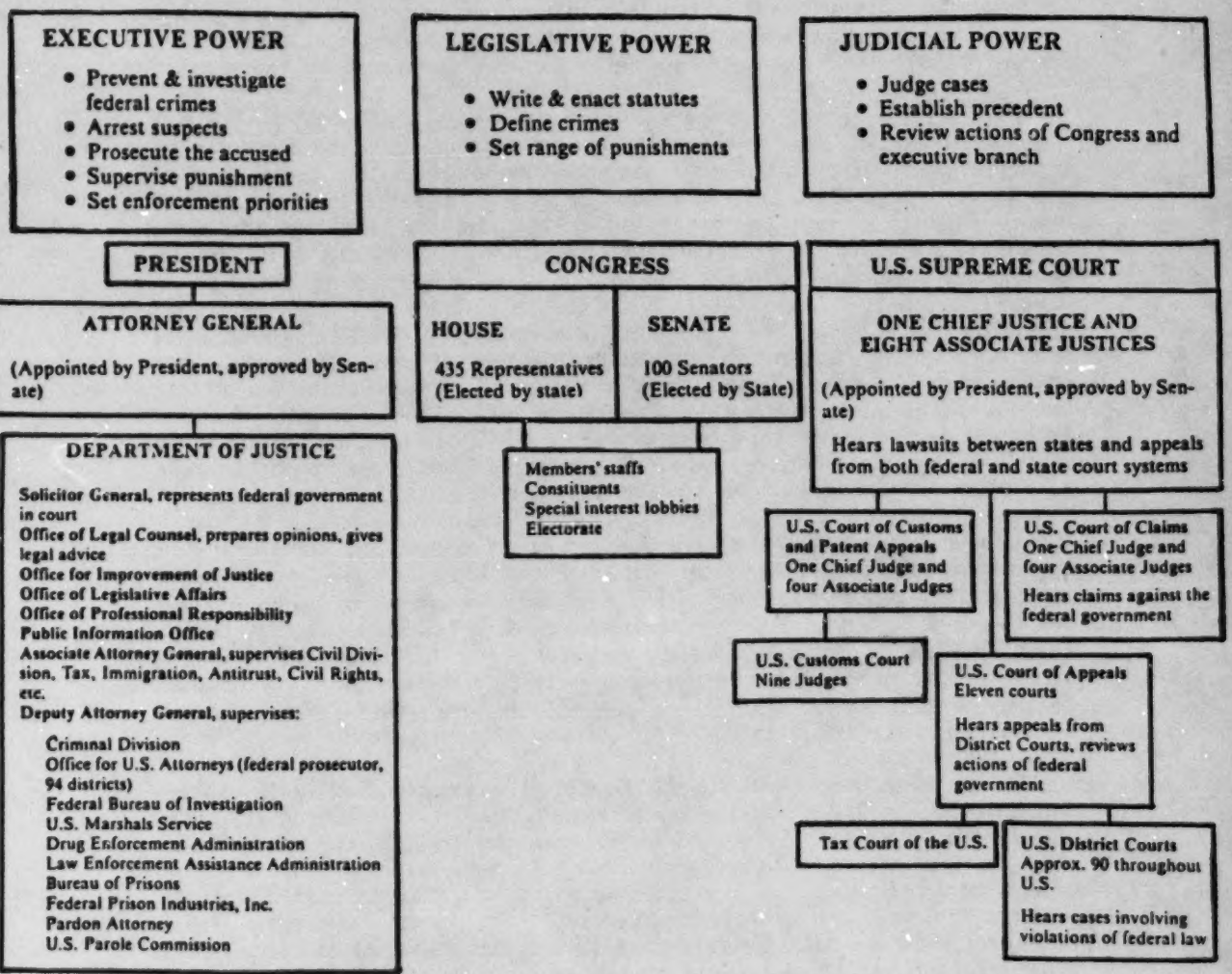
Law enforcement has an obvious impact on crime: The more criminals caught and punished, the safer our streets. The executive branch also affects the crime problem in a more subtle fashion. Imagine that lawmakers pass a statute preventing people from chewing gum in public. They mandate a thousand dollar fine for each offense. If the police decide not to arrest gum-chewers, this law becomes virtually meaningless. By emphasizing the enforcement of some laws over others, the executive branch can give certain legislative decisions more importance than others.

In an ideal world, of course, peace officers would obey lawmakers and enforce every rule on the books. Realistically, enforcement resources are limited and many people break the law. The task of setting priorities often falls to the executive branch. Some of these priorities--for instance, enforcement of the laws against murder--are firmly supported by the public. Others are more controversial. To some citizens, police concentration on so-called "victimless" crimes like drug abuse and prostitution seems an unwise use of taxpayers' money.

The Judiciary

Thus far, we've focused on statutes: laws written and passed by legislatures. Many of the legal rules we follow, however, are not written laws: they're established by precedent. To understand this process, imagine

WHO'S GOT THE POWER?


EXECUTIVE POWER
• Prevent & investigate federal crimes
• Arrest suspects
• Prosecute the accused
• Supervise punishment
• Set enforcement priorities
LEGISLATIVE POWER
• Write & enact statutes
• Define crimes
• Set range of punishments
JUDICIAL POWER
• Judge cases
• Establish precedent
• Review actions of Congress and executive branch
PRESIDENT
ATTORNEY GENERAL
(Appointed by President, approved by Senate)
DEPARTMENT OF JUSTICE
Solicitor General, represents federal government in court
Office of Legal Counsel, prepares opinions, gives legal advice
Office for Improvement of Justice
Office of Legislative Affairs
Office of Professional Responsibility
Public Information Office
Associate Attorney General, supervises Civil Division, Tax, Immigration, Antitrust, Civil Rights, etc.
Deputy Attorney General, supervises:
Criminal Division
Office for U.S. Attorneys (federal prosecutor, 94 districts)
Federal Bureau of Investigation
U.S. Marshals Service
Drug Enforcement Administration
Law Enforcement Assistance Administration
Bureau of Prisons
Federal Prison Industries, Inc.
Pardon Attorney
U.S. Parole Commission
CONGRESS
HOUSE
435 Representatives (Elected by state)
SENATE
100 Senators (Elected by State)
Members' staffs
Constituents
Special interest lobbies
Electorate
U.S. SUPREME COURT
ONE CHIEF JUSTICE AND EIGHT ASSOCIATE JUSTICES
(Appointed by President, approved by Senate)
Hears lawsuits between states and appeals from both federal and state court systems
U.S. Court of Customs and Patent Appeals
One Chief Judge and four Associate Judges
U.S. Court of Claims
One Chief Judge and four Associate Judges
Hears claims against the federal government
U.S. Customs Court
Nine Judges
U.S. Court of Appeals
Eleven courts
Hears appeals from District Courts, reviews actions of federal government
Tax Court of the U.S.
U.S. District Courts
Approx. 90 throughout U.S.
Hears cases involving violations of federal law

that a woman takes her teenage niece on a weekend trip to San Francisco. The child's parents are furious. They have the woman arrested under a California statute which reads:

> Every person who maliciously, forcibly or fraudulently takes or entices away any minor child with intent to detain and conceal such child from its parent, guardian or other person having the lawful charge of such child, is punishable by imprisonment in the state prison not exceeding twenty years.
>
> —California State Penal Code, Section 278

At her trial, the woman argues that she didn't steal the child because she didn't entice her niece "maliciously, forcibly or fraudulently." The words in the statute aren't precise enough to address the woman's argument. What exactly did lawmakers mean by malice, force and fraud? To resolve this case, the judge must interpret the statute.

The judge finds no evidence of malice or fraud in this case. However, the woman did use psychological force. She knew the prospect of such a vacation would be too dazzling for her niece to resist. The judge decides the words "forcibly entice" cover this kind of pressure and declares the woman guilty of childstealing.

If it's adopted by higher courts, the judge's decision can alter the law. The next time someone lures a child away from home by promising a vacation, clothes, even a better life, the prosecuting attorney can refer to this case and ask that the new situation be decided according to the precedent established in the old. It's as if the legislature amended their statute to include psychological as well as physical force.

Usually, judges at several levels of the judicial system must support a precedent before it is firmly established. For example, a District Court judge on one of the lower tiers of the federal judiciary sets a precedent by letting the jury view a video-taped confession. Based on that evidence, the defendant is convicted. Her lawyers appeal, challenging the judge's decision. A panel of judges on the next tier, the U.S. Court of Appeals, will hear the case and either uphold or overturn the lower court's ruling. This review process resolves conflicts when lower courts set opposing precedents and keeps any one judge from entirely rewriting the law.

The Constitution in Article III, Sections 1 and 2 establishes the Supreme Court and describes the cases federal courts can try. That document, however, does not mention the federal judiciary's most important power: judicial review. Through this process, courts can examine government actions and decide whether or not they're legal. The Supreme Court got the power of judicial review by setting the precedent that it had this power. In 1803, to avoid the difficult political situation raised by a case called Marbury v. Madison, John Marshall, Chief Justice of the Supreme Court, declared a law passed by Congress, the Judiciary Act of 1789, unconstitutional.

Though it is a firmly established judicial power, judicial review has not gone unquestioned. Some people fear that this practice allows

appointed Supreme Court justices, rather than elected representatives, to set U.S. policy. Court decisions, they argue, don't reflect the will of the majority and aren't really democratic.

Others feel that the Court has a legitimate mandate to interpret the Constitution and the individual liberties it guarantees. Elected officials might sacrifice minority rights to popular opinion. Supreme Court justices, who don't have to woo the majority to keep their jobs, can be trusted to uphold our supreme law.

LESSON THREE

When students have read "Crime and the Government," divide them into an even number of teams, assigning 4-6 students to each team. Ask the class to read "The People's Quiz," page 8, and complete the activity described therein.

The People's Quiz

The text you've just read contains a great deal of information, both about crime and about the government. How much do you remember? How much does everyone else in the room remember? In the People's Quiz, you'll find out.

The first step in this activity is to create the questions. Working with the rest of your team, write ten True/False questions: three from each section of the text and one based on the chart. The second step is to answer the questions. Your team will trade quizzes with another team. Still working as a group, you'll have five minutes to answer all ten questions. The third step, of course, is to find out how many answers you got right.

Writing good True/False questions is not as simple as it might seem. Identify the most important ideas in each section and base your questions on these concepts. Look for items which will really test the other team's understanding of what they read. Avoid writing questions about information you think unimportant.

You won't have much time to create your quiz, so you may want to divide the task. Assign each team member a different section of text. When everyone has written several questions for their sections, you can regroup and select the best ten. Finally, remember to list the correct answers on a separate sheet of paper.

Allow student teams approximately 15 minutes to create their quizzes. When this task is complete, check to be sure all teams have ten legible questions and a separate answer sheet. Then, have teams trade papers and allow five minutes for students, still working in teams, to take the quiz. When the time is up, again exchange papers for grading. After teams learn their scores, discuss the following questions with your class.

1. On what specific information did your team base its questions? Compare this with the information other teams selected. Did you all find the same facts or ideas important?

- **Initiate this discussion by asking each team to briefly characterize the specific facts and concepts from the text which they included on their tests. Discuss major similarities and differences as they become apparent. Ask teams why they chose or discarded certain information. See if the group can reach consensus about a few facts from each section which should have been included in the quizzes.**

2. Compare the questions you wrote and answered with those normally on school tests. Were they harder to answer? Easier? More or less appropriate to the text? Why?

   - **Encourage students to critique both the questions they wrote and those they answered against the criteria they use for the tests they regularly take.**

   - **If students found any questions irrelevant or unfair, ask for a specific explanation of why these questions seem inappropriate.**

   - **One reason why students may have found this test easier than normal is that, immediately before they took it, they studied the text being tested. In addition, both while "studying" and while taking the test, they had the advantage of working with several other minds.**

3. Did everyone on your team contribute during the activity? Or did one or two people end up doing all the work? What are some advantages to each way of operating? What are some disadvantages?

   - **Be sure students answer this question with specific reference to their experiences during the activity. This is an excellent opportunity to address the issue of non-participation.**

   - **Advantages of everyone contributing include:**

     - **It's fair; everyone has an equal opportunity to participate.**

     - **All members feel a responsibility for and a pride in the group's accomplishments; no one feels ignored, left out, used.**

     - **Decisions can benefit from the different perspectives, ideas, opinions and knowledge of group members.**

   - **Disadvantages include: the process can be lengthy, hectic and frustrating; it may result in compromise choices which satisfy no one; the input of some members may not be as useful as that of others.**

   - **Advantages of one or two people taking charge of the task include:**

     - **Decisions may be made and implemented more quickly.**

     - **"Too many cooks spoil the broth." Did the quizzes really benefit from all that input, or would they have been better if left to one or two "masterminds"?**

- o **The non-participants have an easy time of it; they can avoid both responsibility and effort. If they don't like a project's outcome, they can simply blame whoever took charge.**

- o **Disadvantages include: non-participants may not be satisfied with the outcome; non-participants cannot be certain that the leaders have the team's best interests at heart; the one or two who do the work may end up feeling overworked or taken advantage of.**

4. In the course of this lesson, you've looked at participation from several different perspectives. In your opinion, why don't more Americans participate in our political processes?

   - o **As they address this question, students should refer to the information they read in the text and what they learned while participating in small group activities.**

   - o **Some of the more obvious reasons are lack of time; avoidance of responsibility; lack of interest; political participation can be unrewarding; it's easier to let someone else do it; they prefer to leave it in the hands of experts; they don't feel competent; it's difficult for an individual voice to be heard; etc.**

   - o **One reason which should be highlighted is that citizens need a basic understanding of governmental systems, political and otherwise, in order to affect them. Citizens who lack such knowledge often do not, indeed cannot, effectively contribute.**

Unit 2

A Case of Miss-Taken Identity

Overview

Lesson 1: Student Edition, page 9, Instructor's Manual, page 20

"The Rights of the Accused"—Introductory reading
"The Public's Opinion"--Survey activity
Class Survey Results Chart
"Safety Net or Smokescreen?"--Class discussion about the rights of accused persons

Lesson 2: Student Edition, page 10, Instructor's Manual, page 26

"The Exclusionary Rule"—Reading
"Davis v. Mississippi"--Reading and discussion about Supreme Court case testing the exclusionary rule

Lesson 3: Student Edition, page 13, Instructor's Manual, page 35

"On Appeal"--Activity instruction
"The Judgment"—Debriefing discussion

Purpose

This unit was designed to complement instruction about the judicial branch of government and/or government at the federal level. Its goals are:

- To identify and define several of the rights guaranteed to persons accused of crimes;
- To examine the costs and benefits of such rights;
- To describe and demonstrate the decision-making processes of the federal Supreme Court.

Objectives

After completing Unit 2, students will be able to:

1. Recall and describe at least three rights guaranteed to persons accused of crime in the United States.
2. Recall at least one argument supporting use of the exclusionary rule in American courts and at least one argument against use of the rule.
3. State a personal opinion about whether or not the exclusionary rule should have been applied in Davis v. Mississippi and support that opinion by referring to at least two facts from the case.

Preparation

- Students should read the section of their textbook which describes the powers and structure of the federal judiciary and Supreme Court.

- You will need:

  - Sufficient copies of THE CRIME QUESTION, Student Edition, for distribution to your class.

  - Sufficient photocopies of the survey instrument, page 21 IM, for students to use out of class.

LESSON ONE

Ask your students to read "The Rights of the Accused" and the survey instrument which precedes it, pages 9-10 of their text.

The Rights of the Accused

You've all seen T.V. shows where the hard-boiled police detective slaps handcuffs on a suspect, leans him against a squad car and recites, "You have the right to remain silent. If you refuse the right to remain silent, anything you say can and will be used against you in a court of law."

Law enforcement officers who fail to recite this phrase, a part of the "Miranda" warning, risk serious consequences. If a suspect is not informed of his or her rights before questioning, the results of the interrogation are legally useless. Even if those results include a full confession, no court in the country can admit it as evidence.

The Miranda warning is not mandated by statute. It is required by the judiciary and was established through judicial review. In a 1966 case, Miranda v. Arizona, the Supreme Court reversed an Arizona high court decision and clearly ruled that a confession obtained from an uninformed suspect was inadmissible. As a result, law enforcement agencies across the country changed arrest procedures to include reading suspects their rights.

Miranda is only one of several Supreme Court rulings which protect the rights of accused persons. Some Americans feel that these decisions go too far. The Court, in this view, hampers the police by insisting they follow strict rules about arrests and evidence. Public welfare is sacrificed to the individual rights of criminals.

However, public opinion about these issues varies greatly. Many citizens strongly disagree with the views described above. Where do the people in your community stand? What rights do those around you think accused persons deserve? The Public's Opinion survey is one way of finding out.

THE PUBLIC'S OPINION

Instructions

A. Give this survey to five people in your community. Read each statement aloud. Ask the person or "respondent" if he/she: **STRONGLY AGREES (1); AGREES (2); HAS NO OPINION (3); DISAGREES (4); STRONGLY DISAGREES (5).** Circle the appropriate number below the statement.

B. After you've surveyed five people, total (add the circled numbers together) and average (divide the total by the number of respondents) the response to each of the six statements.

Statements

1. People accused of crimes have too many rights.

RESPONDENT #1	RESPONDENT #2	RESPONDENT #3	RESPONDENT #4	RESPONDENT #5	Total	Average
1 2 3 4 5	1 2 3 4 5	1 2 3 4 5	1 2 3 4 5	1 2 3 4 5		

2. People suspected or accused of crimes should *not* have to answer questions from police or other authorities.

RESPONDENT #1	RESPONDENT #2	RESPONDENT #3	RESPONDENT #4	RESPONDENT #5	Total	Average
1 2 3 4 5	1 2 3 4 5	1 2 3 4 5	1 2 3 4 5	1 2 3 4 5		

3. If an accused person can't afford a lawyer, the government should provide one free of charge.

RESPONDENT #1	RESPONDENT #2	RESPONDENT #3	RESPONDENT #4	RESPONDENT #5	Total	Average
1 2 3 4 5	1 2 3 4 5	1 2 3 4 5	1 2 3 4 5	1 2 3 4 5		

4. Suspects and defendants should be treated as if they are innocent until they are proven guilty in a court of law.

RESPONDENT #1	RESPONDENT #2	RESPONDENT #3	RESPONDENT #4	RESPONDENT #5	Total	Average
1 2 3 4 5	1 2 3 4 5	1 2 3 4 5	1 2 3 4 5	1 2 3 4 5		

5. Judges rather than law enforcement officers should have the final say about whether a person should be detained or jailed.

RESPONDENT #1	RESPONDENT #2	RESPONDENT #3	RESPONDENT #4	RESPONDENT #5	Total	Average
1 2 3 4 5	1 2 3 4 5	1 2 3 4 5	1 2 3 4 5	1 2 3 4 5		

6. If the police obtain evidence illegally, it should not under any circumstances be admitted in court.

RESPONDENT #1	RESPONDENT #2	RESPONDENT #3	RESPONDENT #4	RESPONDENT #5	Total	Average
1 2 3 4 5	1 2 3 4 5	1 2 3 4 5	1 2 3 4 5	1 2 3 4 5		

Give each student a photocopy of the survey (p. 9, p. 21 IM) and clarify any questions about its instructions. Announce a deadline for returning completed survey forms. When they have been returned, appoint a team of students to tabulate the data collected by the class.

Note that the survey's primary purpose is to stimulate class discussion. Since students are not asked to question an accurate sample population, survey results will not accurately represent the community's views.

The following discussion is based on the survey results. It conveys information about rights of accused persons in a Socratic rather than a narrative form. Because of this, your students will not know the correct answers to some of the questions they're asked. The lecture notes listed below each question are a guide for your class discussion. After announcing the survey results, discuss the following questions with the class.

Safety Net or Smokescreen?

1. According to the survey, how strong is support for the rights of accused persons? Is there a difference between general (Statement 1) and specific (Statements 2 through 6) support?

   - **Examine the response to Survey Statement 1 and compare it with the overall responses to Statements 2 through 6. Are the two responses consistent? Did people support the rights in general but not support them in specific, or vice versa?**

2. How strongly did respondents support the right to remain silent? Do you agree with their opinion? Why or why not?

   - **Examine the response to Survey Statement 2 and ask students to state and support their opinions.**

3. In the U.S., an accused person does have the right to remain silent. This is true both during interrogation and in court. Which of our laws establishes this right? How do you think it became a part of our legal system?

   - **The right to remain silent is included in the Fifth Amendment to the Constitution—no person shall be "compelled, in any criminal case, to be a witness against himself."**

   - **The right is also included in all but two state constitutions. (In Iowa and New Jersey, this right is guaranteed by statute rather than through the state constitution.)**

   - **Make sure students understand that the Miranda ruling did not establish the right to remain silent. It established each citizen's right to be informed that he or she has the right to remain silent.**

- o **The evolution of this right includes:**
  - o **Pre-1700: In England, accused persons were directly questioned by their accusers, in and out of court. Often, this interrogation involved torture.**
  - o **1637: In response to a particularly bloody incident, the English Parliament abolished involuntary interrogation in courts which met in secret session.**
  - o **1700: In the latter part of the 17th century and the early 18th century, people gradually became repulsed by the idea of forcible interrogation of defendants. By 1700, most criminal defendants could claim the privilege of silence in England. English legal principles were brought to the colonies.**
  - o **1776: The Virginia Bill of Rights provided that no one "can be compelled to give evidence against himself." The federal Bill of Rights was based, in a large part, on Virginia's document.**
- o **Currently, the Fifth Amendment is interpreted to mean that, in any proceeding where testimony is compelled under oath, a person can refuse to answer any self-incriminating questions. This protection extends to witnesses as well as defendants and to the interrogation process as well as the in-court experience, but it has its limits:**
  - o **If a person is granted immunity from prosecution, voluntarily or involuntarily, he or she can be compelled to answer self-incriminating questions.**
  - o **The Fifth Amendment only protects the person being questioned. One <u>can</u> be compelled to give evidence against other people, even family and close friends.**
  - o **A person gives up the right to remain silent if he or she, as a witness, answers even one incriminating question, or if he or she, as a defendant, takes the stand at his or her own trial.**

4. Many Americans think that the Fifth Amendment only protects guilty people and so is harmful to society. Do you agree? Why or why not?

   - o **The right to remain silent benefits society by placing limits on the law's power to coerce. This is an important protection for all citizens because our legal system has tremendous powers to compel obedience. Our courts can force almost anyone to testify under oath about almost any subject.**
   - o **Ask students to identify negative consequences of the right to remain silent and weigh the costs and benefits of the protection.**

5. How strongly did survey respondents support the right to an attorney? Do you agree with them? Why or why not?

- o **Examine the response to Survey Statement 3 and have students state and support their opinions.**

6. In the U.S. an accused person has the right to be represented by an attorney. If he or she can't afford a lawyer, the government must provide one free of charge. Where do you think this right comes from?

   - o **The Sixth Amendment of the Constitution says that "in all criminal prosecutions, the accused shall enjoy the right . . . to have the assistance of counsel for his defense."**

   - o **The evolution of the right to assistance of counsel includes:**

     - o **1100: In England, the right to counsel was established for people accused of minor crimes. Felony defendants, however, were not allowed counsel, since it was assumed that they would not have been charged if they were not guilty and, since they were guilty, they had no need of counsel.**

     - o **1696: Attorneys in England were finally allowed to represent defendants accused of felonies. This practice was transmitted to the colonies.**

     - o **1789: Right to counsel was included in the Bill of Rights.**

   - o **The right to an attorney, <u>at government expense</u> if necessary, was established not by statutory law but by judicial review.**

     - o **Before 1932: In the U.S., defendants had the right to assistance of counsel only if they hired the lawyer. People who couldn't afford lawyers were not guaranteed representation.**

     - o **The following Supreme Court rulings gradually reinterpreted the right:**

       1932 <u>Powell v. Alabama</u>: If a defendant is poor and charged with a capital offense, the state must provide a lawyer.

       1938 <u>Johnson v. Zerbst</u>: All defendants in federal criminal cases must have counsel.

       1942 <u>Betts v. Brady</u>: All defendants in state criminal cases <u>do not</u> have to be given counsel.

       1963 <u>Gideon v. Wainwright</u>: All defendants in state criminal cases <u>do</u> have to be given counsel.

       1963 <u>Douglas v. California</u>: Counsel must be furnished for defendants who want to appeal their cases.

       1964 <u>Escobedo v. Illinois</u>: Counsel must be furnished during interrogation.

     - o **Students should note that the different rulings in <u>Betts v. Brady</u> and <u>Gideon v. Wainwright</u> show how a judicial precedent can be overturned.**

7. Providing free lawyers for people accused of crimes can be costly. Is the right to counsel worth the expense to taxpayers? Why or why not?

   - **While discussing this question, students should note that it is difficult for an untrained person, innocent or guilty, to maneuver within our complicated legal system.**

8. How strongly did the respondents support the presumption of innocence? Do you agree with their opinion? Why or why not?

   - **Examine the response to Survey Statement 4 and ask students to state and support their opinions.**

9. Under American law, a person accused of a crime is presumed innocent until his or her guilt is proven beyond reasonable doubt in a court of law. How do you think this presumption became part of our legal system? Where in our laws is it stated?

   - **Presumption of innocence can be traced back to Biblical times. It is evident in the laws of Sparta, Athens and Rome. It did not, however, find expression in its current form until the beginning of the 19th Century. In 1895, in Coffin v. U.S., the U.S. Supreme Court declared:**

     > **"The principle that there is a presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law."**

   - **The presumption of innocence is not explicitly stated in the Constitution. It is mandated by federal statute and judicial interpretation. In addition, most states have passed statutes to include this presumption in their penal codes.**

10. The English police force has a very strong reputation for honesty and thoroughness. Because of this, some people think the British public assumes all defendants brought to trial are guilty. Do Americans assume a defendant's guilt? Think of a trial currently in the news, one which hasn't been settled yet. Do you tend to believe the defendant in that case is guilty? Why or why not?

    - **As students discuss this question, ask if they think the police and public really treat suspects as if they're innocent.**

11. In the U.S., people who believe they are being imprisoned illegally can ask a judge to release them by issuing a writ of habeas corpus. How strongly did survey respondents support this privilege? Where is it established in our laws?

    - **Examine the response to Statement 5 and ask students to state and support their opinions.**

    - **Article II, Section 9 of the Constitution reads:**

"The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it."

- **Lincoln suspended habeas corpus in certain parts of the country during the Civil War, which engendered a battle with the Supreme Court. The territorial governor of Hawaii suspended habeas corpus immediately after the attack on Pearl Harbor in 1941. (The Supreme Court declared this action unconstitutional in 1946.)**

12. How does habeas corpus benefit society? Why do you think this privilege is only rarely suspended?

- **Habeas corpus benefits society by preventing illegal detentions. It gives prisoners (before, during and after trial) the right to appeal directly to an impartial third party (the courts) if they feel they are being held unjustly.**

- **Habeas corpus has been successfully invoked in situations where a person is being held prisoner by private citizens. A husband used the privilege to obtain his wife's release from her parents' custody; a mother, to obtain her child's release from foster parents.**

- **Habeas corpus is only suspended under extraordinary circumstances because, without it, private citizens are completely at the mercy of law enforcement personnel.**

Response to Statement 6 will be discussed during the examination of the exclusionary rule in Lesson Two.

LESSON TWO

Begin the lesson by asking your students to read "The Exclusionary Rule," pages 10-12.

The Exclusionary Rule

In their efforts to stop crime, the police themselves sometimes do things which are not legal. They may search a building without a warrant. They may break into a home or office. They may disturb or detain people without just cause. Obviously, such activities are not praiseworthy, but are they practical? Can breaking the law really help police convict criminals? The Supreme Court has said no.

"If letters and private documents can be thus seized and held and used in evidence against a citizen accused of an offense, the protection of the Fourth Amendment declaring his right to be secure against such searches is of no value, and, so far as those thus placed are concerned, might as well be stricken from the Constitution. The efforts of the courts and their officials to bring the guilty to punishment, praiseworthy as they are, are not to be aided by the sacrifice of those great principles

established by years of endeavor and suffering which have resulted in the fundamental law of the land."

—U.S. Supreme Court
Weeks v. United States (1914)

With some exceptions, U.S. courts cannot admit any material into evidence (whether papers, objects or testimony like confessions) which is a result of illegal activity on the part of law enforcement officers. This is the exclusionary rule, yet another procedure established by judicial precedent.

The Supreme Court set this precedent almost a century ago. In 1886, they reviewed Boyd v. United States. Boyd had been convicted of a federal offense because of evidence collected during a search prohibited by the Constitution. The Court ruled that the evidence could not be used—even if it conclusively proved Boyd was guilty. Thirty years later, in 1914, the Court strengthened its precedent by excluding illegally-obtained evidence from use in a similar case, Weeks v. United States.

Two arguments support the exclusionary rule:

- o The fruit of a poisoned tree is as poisonous as the tree itself. The evidence resulting from illegal activity is, like this fruit, tainted with illegality and injustice. Further, if the courts base decisions on this "ill-gotten gain," they too are poisoned and their decisions become unjust.

- o Excluding tainted evidence is the most practical way to prevent police abuse of Fourth Amendment rights. Police will not resort to illegal searches and seizures if the results of these activities are useless.

Boyd and Weeks only affected federal courts. Until the middle of this century, two-thirds of the state court systems rejected the exclusionary rule. Many citizens felt it only protected guilty persons. Others thought it was an unnecessary burden on police. Is it right, asked the New York Court of Appeals in 1926, that "the criminal is to go free because the constable has blundered?"

Because few states voluntarily adopted the rule, the Supreme Court was asked in Wolf v. Colorado (1949) to apply the rule to state criminal procedures. The petitioner's attorneys argued that the exclusionary rule protects Fourth Amendment rights. Such rights are a basic and necessary part of legal due process. Under the Fourteenth Amendment, no state can deprive any citizen of the due process of the law. Therefore, the exclusionary rule should apply to state criminal trials.

The Supreme Court replied that the exclusionary rule was not the only way to protect citizens' Fourth Amendment rights. Since the rule itself was not mandated by the Constitution, each state could make its own decision about how to uphold the Fourth Amendment. Forcing obedience to the rule would violate states' rights.

Wolf didn't settle the problem of tainted evidence. It simply tossed this question back to state judiciary and law enforcement. Some states tried alternative methods of police control. Throughout the 1950s, however, support for the exclusionary rule grew. The California Supreme Court explained both the dilemma and its decision to adopt the rule. "We have been compelled to reach [this] conclusion," it stated in People v. Cohan (1955), "because other remedies have completely failed to secure compliance with the constitutional provisions on the part of police officers, with the attendant result that the courts under the old rule have been constantly required to participate in, and in effect condone, the lawless activities of law enforcement officers."

In 1961, the unresolved conflict between illegally obtained evidence and states' rights reappeared before the Supreme Court. The case was Mapp v. Ohio. The petitioner, Ms. Mapp lived with her young daughter in a two-story house in Cleveland, Ohio. On May 23, 1957, Cleveland police appeared at her door and demanded entry. Though they gave Mapp no explanation, they later said they were responding to a tip about a recent bombing.

After phoning her attorney, Mapp refused to let the officers in without a warrant. They retreated. Three hours later, reinforcements arrived and police demanded entrance. Mapp did not respond so police broke into the house.

Ms. Mapp was in the stairway when the police entered. She demanded to see their warrant. An officer waved a piece of paper at her and she grabbed it. Before she could read it, officers forcibly retrieved the paper and handcuffed the woman. They then dragged her upstairs and searched through the belongings and personal papers in her bedroom.

By this time, Mapp's attorney had arrived. Police would not let him in the house. Officers continued their work searching through the rest of the house, including the child's bedroom. In spite of their thoroughness, all that officers found were some obscene materials tucked away in a trunk in a corner of the basement. Mapp was arrested, tried for and convicted of possessing these materials.

During Mapp's trial and the subsequent appeals, the state never denied that the police search was illegal. But no matter how badly the police behaved, Ohio attorneys argued, their actions did not affect the facts of the case. Mapp did have obscene materials in her basement. She was guilty as charged and her conviction should not be overturned. Just as they had decided in Wolf, the high court should let each state handle police excesses in its own way.

The Supreme Court, however, could not tolerate such an obvious abuse of police power. Ruling that "nothing can destroy a government more quickly than its failure to obey its own laws," the Court threw out Mapp's conviction and returned the case to a lower court for further proceedings. In doing so, the Court extended the exclusionary rule to all criminal trials in the country, both state and federal.

The final paragraph of the majority opinion sheds light on this difficult decision:

> "Having once recognized . . . that the right to be secure against rude invasions of privacy by state officers is constitutional in origin, we can no longer permit that right to remain an empty promise . . . . We can no longer permit it to be revocable at the whim of any police officer who, in the name of law enforcement itself, chooses to suspend its enjoyment. Our decision, founded on reason and truth, gives to the individual no more than that which the Constitution guarantees him, to the police officer no less than that to which honest law enforcement is entitled, and, to the courts, that judicial integrity so necessary in the true administration of justice."

The Mapp decision did not end national discussion of the exclusionary rule or conflict over its application. Recently, the Supreme Court has been considering several exceptions to the rule. Under one, illegally seized evidence could be used in criminal trials if a police officer was acting in "good faith" or under a reasonably mistaken belief that the evidence was being taken legally. Under another, a court could admit evidence taken unlawfully if the judge believes the police would have, sooner or later, found the evidence by legal means. Either way, the debate over the exclusionary rule probably will continue for years to come.

Discuss the following questions with your class.

1. What is the exclusionary rule? Why was it established?

   - **It is a rule established by judicial precedent (not statute) which states that a judge must exclude illegally obtained evidence from admission to court.**
   - **The Supreme Court saw it as the only effective way of preventing and punishing abuse of those rights guaranteed by the Fourth and the Fourteenth Amendments to the Constitution. The Court reasoned that:**
     - **Illegally obtained evidence is immoral, tainted. If a judge admits tainted evidence, he or she corrupts the judicial process.**
     - **No matter how apparently convincing, illegally obtained evidence is not trustworthy. An officer who doesn't mind breaking the law to obtain evidence cannot be trusted to refrain from actually faking evidence.**
     - **Citizens will lose faith in the fairness of our judicial system if it becomes obvious that the courts and law enforcement personnel are above the law.**

2. The treatment Ms. Mapp received was an extreme case of police misbehavior. Such abuses are rare. Even so, our justice system has a remedy for them. How was the injustice suffered by Ms. Mapp corrected?

- Because the Mapp case shows such extreme abuse of citizen rights, it is important for students to understand that, though the justice system did injure Ms. Mapp, it also corrected that injury through judicial appeal based on constitutional protections. In other words, two components of the legal system protected Ms. Mapp's rights: the Constitution and the appellate process.

- Review the judicial steps in the Mapp case and point out how these two components worked together.

  - The possible violation of Mapp's Fourth Amendment rights had little bearing that the original trial. The obscene materials from Mapp's basement were both convincing and relevant to the crime with which she was charged. The manner in which the materials were acquired did not, to the judge's mind, affect their relevance. He admitted them as evidence against Mapp and she was convicted.

  - The case was appealed to the Ohio State Supreme Court which did consider the constitutional issues involved. Mapp's conviction, the court ruled, was primarily based upon evidence which was "unlawfully seized during an unlawful search of the defendant's home," and "the methods employed to obtain the [evidence] were such as to offend 'a sense of justice.'" Even so, the Ohio Court felt that, because police had not obtained the evidence "by the use of brutal or offensive physical force against the defendant," the constitutional issue was not important enough to justify overturning the conviction.

  - Upon further appeal, the U.S. Supreme Court agreed that the search and seizure were unlawful. They also clearly stated that using unlawfully seized evidence was, in effect, "a denial of the constitutional rights of the accused." Protection of these rights, in the Court's majority opinion, was more important than convicting Mapp (and protecting the citizens of Ohio from obscenity) and the Ohio Court's decision was reversed.

- Students may feel that, though Mapp's injury was eventually redressed, it "took too long" or "was too much trouble." Point out that by extending the exclusionary rule to state criminal proceedings, the Court was making a "short cut." In the future, accused persons whose Fourth Amendment rights had been violated would be more likely to successfully exclude the unlawfully obtained evidence from the initial trial and would not necessarily have to appeal their cases to obtain redress.

3. Three of the nine Supreme Court justices who decided Mapp v. Ohio voted against the exclusionary rule. What arguments might be used against the rule?

   - By releasing criminals, the rule punishes society rather than the officer who committed the illegal act.

- o **The rule benefits the guilty, who are set free, but does nothing to help innocent people who are victims of illegal but fruitless police searches.**

- o **It encourages police corruption because, by bungling an arrest, the police can free criminals (especially members of organized crime) and blame the courts for their escape.**

- o **It does not distinguish between law enforcement officers who make mistakes during a search or arrest and those who intentionally disobey the law.**

- o **There are other, better ways of controlling police abuse.**

4. According to the Constitution, "the right of the people to be secure . . . against unreasonable searches and seizures" shall not be violated. If the exclusionary rule were overturned, how else could citizens be protected from police abuse?

   - o **Civil action. Under federal statutory law, and by law in some states, a person whose rights have been violated by officials acting "under color of office" can sue the official in a civil court for damages. This is a civil action, so the official isn't being punished but being asked to make restitution. Also, the plaintiff must spend considerable time and money pursuing a civil action.**

   - o **Criminal action. The states or the Federal government could pass new criminal laws so that officers who violate citizens' rights can be prosecuted and punished as criminals.**

   - o **Contempt of court. Judges could cite officers who obtain evidence illegally for contempt of court. This could automatically suspend the officer from duty without pay.**

   - o **Administrative review. Some people think police abuse of citizens' rights should be treated just like any other kind of police misconduct. It should be considered a disciplinary problem that department officials investigate, judge and punish internally.**

   - o **Citizen review boards. Others think that police departments can't be trusted to police themselves. Communities should set up review boards composed of ordinary citizens to judge and punish complaints against the police.**

5. Take another look at the survey results. How strong is support for the exclusionary rule? Do you agree with this opinion? Why or why not?

   - o **Examine the response to Survey Statement 6 and ask students to state and support their opinions.**

When this discussion is complete, have students read "Davis v. Mississippi," page 12.

Davis v. Mississippi

On the evening of December 2, 1965, Ms. N was raped in her home in Meridian, Mississippi. She could provide police with no better description of her assailant than that he was a black youth. The only other lead in the case was a set of fingerprints found on a windowsill in Ms. N's home. Police assumed these were made by the assailant as he entered the house.

While investigating the crime, Meridian police took at least 24 black youths to the police station. There they were fingerprinted and routinely questioned. These detentions were made without warrant, but the youths were held only briefly. All were released without charge. Police questioned an additional 40 to 50 black youths at the police station, at school, or on the streets.

John Davis, a black 14-year-old who occasionally did yardwork for Ms. N, was fingerprinted and questioned on December 3rd. During the next four days, John was questioned several times in his home, in a car, and at the police station. The police apparently hoped to get information about other youths suspected of the crime.

In addition, John was repeatedly taken to Ms. N's hospital room. Officers wanted to provide Ms. N with "a gauge to go by on size and color" so she could more accurately describe her assailant. Not once during these examinations did Ms. N identify John as her assailant.

On December 12, John was again picked up by the police. This time they drove him 90 miles to Jackson, Mississippi and jailed him overnight. The next morning, he was given a lie detector test and interrogated. He was then driven back to Meridian.

On December 14, John was fingerprinted a second time. Later that day, police sent these prints, along with 23 sets collected from other suspects, to the F.B.I. After running a comparison, the F.B.I. reported that John's prints matched those taken from Ms. N's windowsill. John was indicted and tried by jury for the December 2nd rape.

John's arrest and detention from December 12 to December 14 were illegal. There is no question on this point. Before they can make an arrest, the police must have either a warrant from a judge or probable cause to believe a person has committed a crime. In John's case, the police had neither. In addition, John was not allowed to see an attorney, which is also illegal. The fingerprints sent to the F.B.I. were, then, the product of an illegal detention.

John's December 3rd detention may or may not have been legal. Again, John was detained without a warrant or probable cause. The police were employing "dragnet" procedures and paid little attention to the rights of those they questioned. On the other hand, no one was held long and, according to the Meridian police, the dragnet procedures were normal. The December 3rd prints may have been taken legally. However, these were not the prints the F.B.I. received.

During the trial, John's attorney tried to suppress the fingerprints. The set sent to the F.B.I. was clearly the result of an illegal detention.

The other set in police possession was questionable. Neither set, argued the attorney, nor any information about them was admissible under the exclusionary rule.

The trial judge disagreed and the prosecution presented the prints as evidence. During the trial, Ms. N, under oath, positively identified John as her assailant. John was convicted and sentenced to life imprisonment.

Could this judgment be appealed? Since judges in appeals courts did not preside at the original trial they have no way of deciding whether the evidence and facts presented were convincing. They must, therefore, accept the jury's findings about "matters of fact." Appeals courts can, however, review "matters of law": Was the trial conducted properly? Did the judge correctly interpret the law? Was the Constitution upheld?

John's attorney thought the fingerprints should have been excluded. Arguing that the trial judge's decision was improper and that his client's rights had been violated, the attorney appealed to Mississippi's Supreme Court.

The court, however, agreed with the judge. In its opinion, the fingerprints were a particularly "trustworthy" means of identification. Prints taken lawfully were exactly the same as those taken unlawfully. Since, unlike other evidence, they could not be tainted by the way in which they were collected, fingerprints were not subject to the exclusionary rule.

John's attorney again appealed and, early in 1969, the U.S. Supreme Court heard the case. The Court was considering only one question:

> Should John Davis' fingerprints have been excluded as evidence at his jury trial because they were the product of a detention which was illegal under the Fourth and Fourteenth Amendments to the United States Constitution?

The Petitioner, John Davis, said yes. The Respondent, the State of Mississippi, said no.

Discuss the following questions with your class.

1. Who was John Davis? What crime was he charged with?

   - **John Davis was a 14-year-old black youth from Meridian, Mississippi. He was accused of raping a white woman for whom he did yardwork.**

2. What was the evidence against him? What was controversial about the evidence?

   - **His fingerprints matched a set of fingerprints taken from the windowsill of the victim's home.**

   - **At least one and possibly both sets of fingerprints were taken during illegal detention/arrest.**

3. How was the way in which police treated John unlawful?

   - **They detained and questioned him without probable cause or a warrant on December 3 and several times over the next ten days (for instance, when they took him to the hospital).**
   - **They detained him from December 12 through 14 without probable cause or a warrant.**
   - **They denied him access to an attorney during detention and interrogation.**
   - **Students may mention that Davis was not informed of his rights. However, this was not unlawful in 1965. The Miranda decision was not handed down until 1966.**

4. Do you think it makes any difference that the F.B.I. received John's December 14th fingerprints rather than those taken on the 3rd? Why or why not?

   - **The prints taken on the 3rd were less likely to be suppressed under the exclusionary rule because police behavior was less suspect on the 3rd than on the 14th.**
   - **On the other hand, what real difference is there between the two set of prints? Since fingerprints are the same every time they're taken, the circumstances of the detention could not possibly effect their reliability as a means of identification. The F.B.I. could have used fingerprints from the 3rd, the 14th, or January 7th with the same result. Students should note that the Mississippi Supreme Court based its decision on this reasoning.**

5. On what grounds was John's case appealed?

   - **Because a major piece of evidence against him was the product of an unlawful detention/arrest.**

6. Would the fingerprint evidence have an effect on your opinion about whether John Davis was guilty or not?

   - **John might seem guilty because his fingerprints were found on the victim's windowsill and because she positively identified him as her assailant under oath.**
   - **John might seem innocent because, since he did yardwork for the victim, his fingerprints around her house were not necessarily out of place, and because she did not identify him as her assailant during the several times he was taken to her hospital room.**
   - **In either case, the finge print evidence is critical to an opinion about John's guilt. Students should note that, in all likelihood, its exclusion would have affected the outcome of the trial.**

7. When the Supreme Court heard this case, they were considering only one question. What question?

- **Should the fingerprints be excluded as evidence because they were the result of an unlawful detention/arrest?**

- **Be sure students understand that the court was not considering Davis' guilt.**

LESSON THREE

Have students read "On Appeal," page 13.

On Appeal

If you sat on the Supreme Court, how would you rule on John's case? Would you exclude the fingerprints? "On Appeal" will help you decide. In this activity, the Supreme Court's procedures are simplified to the following steps:

1. Attorney teams for the Petitioner (the party making an appeal) and for the Respondent prepare arguments to support their positions and present these to a Court of nine Justices. Each side is allowed four minutes for its presentation.

2. As the Court hears the arguments, any Justice can interrupt to ask questions. After both sides have presented, the Justices can ask additional questions about the case.

3. The Chief Justice recesses the Court for deliberation. Each Justice in turn explains his or her opinion. After all have spoken, the Chief Justice moderates a five-minute conference in which Justices try to change each others' minds. At the end of the conference, the Justices take a final vote.

Appoint two teams of four to six students each, one to act as attorneys for the Petitioner, John Davis, and one to represent the Respondent, the State of Mississippi. These teams should read the "Attorney Instructions," page 13, and prepare their presentations. Have the rest of the class read the "Justice Instructions," page 13.

Attorney Instructions

As attorneys, you are responsible for presenting the Court with the best explanation for:

- Why the fingerprints should be excluded (if you represent the Petitioner, John Davis); or
- Why the fingerprints should not be excluded (if you represent the Respondent, the State of Mississippi).

Working with your team, write down the following information:

- A clear, brief statement of your position
- At least two facts from the case which support your position
- An explanation of how each fact supports your position
- One previous court decision which supports your position
- One reason why your position is fair to Davis
- One reason why a Court decision in your favor will benefit society

Make an outline ordering this information so that all of it can be included in your four-minute presentation. Decide which team members will present which information. Finally, assign at least one team member to answer the Justices' questions. He or she should prepare by carefully reviewing the case description.

Justice Instructions

When preparing to hear arguments, Supreme Court Justices review documents about a case and identify the questions they want to ask the attorneys. What don't you understand about Davis v. Mississippi? What facts do you want clarified? Which of their clients' actions would you like the attorneys to justify or explain?

Justices also prepare by reviewing previous Court decisions. Which of the cases you read about in "The Exclusionary Rule" could be applied to this case? Remember, when you make your decision about Davis v. Mississippi, you must consider these precedents, but you are not bound by them. Many Americans today would like the Court to reverse its previous stands on the exclusionary rule.

While attorney teams are preparing, work through the following activity based on the Justice Instructions with the rest of the class. Begin by reviewing previous Court decisions about the exclusionary rule. As students recall those decisions, ask how each might be applied in the Davis case. Incorporate the following points in the class discussion.

- **The Boyd (1886) and Weeks (1914) decisions applied only to federal criminal trials. Since Davis is a state trial, the exclusionary rule could be applied to it under the Court's 1961 Mapp v. Ohio decision.**
- **The Court's reasoning in all three decisions—"the only way to curb police abuse" and "fruit of a poisoned tree"—does apply to the Davis case. Ask students:**
  - **Did police abuse Davis? Will ruling in Davis' favor stop future abuse? Will ruling against Davis make the Fourth Amendment an "empty promise," as the Court suggested in Mapp?**
  - **Can fingerprints be "tainted"? Does collecting fingerprints in an unlawful fashion affect their validity as evidence? If so, how?**
- **Remind students that, though previous Court decisions must be considered, they are not binding. For instance, if students feel Mapp is a violation of states' rights they can reverse that decision.**

Close this discussion by dividing students into nine small groups. Explain that, as Justices, they must prepare questions to ask the attorneys during the oral presentations. Point out questions raised during the discussion about the facts of the case or the issues involved, (i.e., is there any evidence that police mistreated Davis? How do Mississippi police justify their treatment of Davis?) Ask each group to write four questions: two for the Petitioner and two for the Respondent.

When small groups have written their questions, select one student from each group to sit on the Court. The selected students should be charged with raising and answering their groups' questions during the "On Appeal" activity. Check to be sure attorney teams are prepared. Select a student timekeeper and a Chief Justice; both these students should review the instructions in "On Appeal," page 13.

When everyone is ready, ask the Chief Justice to call the Court to order and proceed as directed in the activity instructions. The Petitioner's team should present first. The timekeeper should interrupt if time limits are exceeded. (Time spent answering Justices' questions should not be counted against a team's time limit.) After the presentations, the Court should recess. All students should observe this conference, though none but Justices may participate. When the decision has been rendered, discuss the following questions with your class.

The Judgment

1. How well did Davis' attorneys present their case? Did they leave out any important information? Were their arguments sound and reasonable?

2. How well did the Respondent present its case? Was any important information left out? Were Mississippi's arguments valid?

3. Did the Justices ask the right questions during the presentations? During their conference, what arguments did they consider? Did they ignore any important arguments?

4. Does the Justices' decision support or reject the exclusionary rule? Do you agree with their decision? Would the people you surveyed support this decision?

   - **In general, a decision for Davis supports the rule; a decision for Mississippi rejects it. However, the Justices could render a decision for Mississippi and say that, though they support the rule, it doesn't apply to the circumstances of this case.**

   - **Take a class hand vote to determine support of the decision and ask individuals to explain their views. Then, compare the decision with the response to Survey Statement 6.**

5. U.S. Supreme Court decisions are made by a process similar to the one you just tried, except:

   - Attorneys for the Petitioner and Respondent must give the Court detailed written arguments, called briefs, before the case is heard. Because Supreme Court decisions set precedents which affect the entire nation, other interested parties can air their views about a case in Friend-of-the-Court briefs.

   - During oral arguments, each side is allowed only one hour which includes questioning by the Court. This time limit is strictly enforced.

- When the Court reaches a decision, the Chief Justice assigns someone to write an explanation of the majority opinion. Justices who disagree or dislike the majority's reasoning may write their own dissenting opinions.

Do you think this process is fair? Why or why not?

- **Process is fair because:**
  - **Both sides have equal and ample opportunity to present arguments.**
  - **Other interested parties can contribute.**
  - **The winning opinion is formed by a majority of well-informed judges.**
- **Process is unfair because:**
  - **The decision is made by only a handful of people. (Important decisions like this should be made by a much larger group, should be voted on, etc.)**

6. Your teacher will explain the Supreme Court's decision in Davis v. Mississippi (1969). Compare both the judgment and the reasoning behind it with your own.

- **The Justices decided in favor of Davis, the Petitioner (6 in favor of Davis; 2 in favor of Mississippi; 1 not present). Davis' case was returned to the Mississippi courts for further proceedings.**
- **Justice Brennan wrote the majority opinion. He stated:**
  - **There's no difference between fingerprints and other kinds of evidence. Beyond that, Mississippi is missing the point. "To make an exception for illegally seized evidence which is trustworthy would fatally undermine" the exclusionary rule's use as a sanction against police excesses.**
  - **The December 12th through the 14th detention was clearly illegal. The December 3rd detention was also invalid because the police had no intention of charging Davis at that point. (The Fourth Amendment applies to investigations as well as arrests.) Mississippi presented no evidence to suggest that the Meridian police were acting in good faith at any time during their entire investigation and arrest. This is just the kind of police abuse that the exclusionary rule was intended to punish.**
- **The dissenters argued:**
  - **Justice Black: It's another example of the Court "blowing up the Fourth Amendment's scope so that its original authors would be hard put to recognize their creation."**
  - **Justice Stewart: Both sets of fingerprints were illegally taken, but the exclusionary rule shouldn't be extended to cover fingerprints. It shouldn't be used to punish police, but to expel tainted or questionable evidence. Fingerprints, because they**

"can be endlessly and exactly reproduced," aren't questionable evidence. (This, again, was the Mississippi Supreme Court reasoning.)

- o Have students compare the Supreme Court's reasoning with that used in their own decision.

- o Students should discuss whether or not they think the Supreme Court's decision is fair to the accused and/or to society. Raise these points: it's fair to the accused because it upholds his or her right to a fair trial and to protection from police abuse; it's fair to society because it upholds every individual's right to these two protections; it's unfair to society if it releases a criminal without appropriate punishment. This may send a message to other criminals that, as they are less likely to be punished for their crimes, they can commit crimes with impunity.

7. In June and July, 1984, the Supreme Court approved these exceptions to the exclusionary rule.

   - o Courts can admit illegally seized evidence if it is more likely than not that, in time, police would have discovered the evidence legally.

   - o Evidence gathered by police acting in good faith can be admitted if the police are reasonably relying on a search warrant which turns out to be technically defective or, through a judge's error, turns out not to be based on probable cause.

   Would either of these exceptions have changed your decision in Davis v. Mississippi? Do you think they're fair? Explain your answers.

   - o The first exception (Nix v. Williams) would impact the Davis case as the police could easily have obtained Davis's fingerprint in a lawful manner. Students should discuss how this might or might not have affected their decisions.

   - o Based on their study of this unit, students should state and support their opinions about these exceptions.

   - o Exclusionary rule cases appear before the Supreme Court on a relatively regular basis. As a research project, have students investigate how Court decisions in the recent past have affected the rule. Also ask the class to watch for and report on current Court rulings.

Unit 3

There Ought to Be a Law

Overview

Lesson 1: Student Edition, page 14; Instructor's Manual, page 41

"The Public's Rights"—Interview activity about causes of and solutions to the crime problem
"Official Responses"--Class discussion of interview results

Lesson 2: Student Edition, page 15; Instructor's Manual, page 44

"The State of State"--Reading and discussion which describes pending anti-crime legislation in a hypothetical state
"Representative"--Reading and activity simulating legislative committee action
"District Descriptions"

Lesson 3: Student Edition, page 18; Instructor's Manual, page 51

"On the Floor"—Reading and activity simulating a legislative session
"State's Law"--Reading about State's legislative process
"Response and Responsibility"—Class discussion to debrief the simulation and examine legislators' responsibilities

Purpose

This unit was designed to complement instruction about the legislative branch of government and/or government at the state level. Its goals are:

- To examine the costs and benefits of restricting the rights of accused persons in order to protect society's rights;
- To describe and demonstrate the legislative process at the state level.

Objectives

After completing Unit 3, students will be able to:

1. Recall the major steps in the legislative process.
2. With reference to the opinions of community officials, describe at least two causes of and two solutions to the crime problem.
3. State and defend a personal opinion about whether or not individual rights should be restricted to preserve the public welfare.

Preparation

- Students should read the section of their textbook which describes the legislative process and the structure and powers of state government.

- You will need:
  - Sufficient copies of THE CRIME QUESTION, Student Edition, for distribution to your class.

LESSON ONE

Have students read pages 14-15, "The Public's Rights."

The Public's Rights

Our Constitution does an excellent job of identifying and protecting the political rights of every American. But, in addition to our rights to petition, speak freely and assemble, to bear arms and demand equal treatment under the law, don't we also have the right to live in safe cities, to walk at night without fear? Haven't we the right to be protected from each other as well as from the government?

Violent crimes are violations of the victim's rights to liberty, property and, sometimes, life. They are also violations of the public's rights to security and safety. Just as our government must protect the individual rights of the accused and the victim, so must it protect society's rights, so must it "promote the general welfare" and "insure domestic tranquility." To do this, government must stop violent crime.

How is this to be accomplished? Should we tackle the effects of crime? Or eliminate its causes? What are those causes? What solutions have been suggested? Which are supported by the people in your community who must regularly cope with crime? To answer these complicated questions interview one of the following people:

- A judge. Contact a judge's association or work through a court clerk.
- A criminal lawyer. Contact the bar association.
- A law enforcement officer. Contact the police or highway patrol's public relations office.
- A hearing officer or case worker in the juvenile justice system. Contact your court's juvenile division.
- The owner of a market or another business likely to face the problem of armed robbery. Contact the Chamber of Commerce.
- A public defender. Contact the public defender's office.
- A probation officer. Contact the probation department of your county or municipal court.
- An assistant to a city councilperson or state legislator. Politicians usually have offices throughout their districts to serve constituents. Contact the community service or public relations person at one of these offices.

Working with the others in your group, speak to the appropriate agency and identify an individual to interview. Contact that person. After explaining your purpose, arrange a convenient time for him or her to answer your questions. The interview can be conducted over the phone, but you may wish to visit your subject's offices.

During the interview, get thorough answers to the following questions.

1. Is there a significant crime problem in this community? If so, what is the nature of the problem?

2. What are the major causes of crime in this community?

3. What are the major causes of the nation's violent crime problem?

4. What steps should be taken to reduce crime in this community?

5. What steps should be taken to solve the nation's crime problem?

After completing the interview, write a brief report explaining the answers you received.

Divide the class into eight groups and assign one of the individuals listed above to each group. We suggest you allow at least a week for students to conduct their interviews and prepare reports. When the assignment has been completed, discuss the following questions with your class.

Official Responses

1. What significant crime problems exist in your community? Were you aware of these problems before your interviews with officials? Do you know of important community crime problems which officials did not mention?

   - **Be sure at least one student from each group responds to this question. Depending on the community, answers may include gang violence, street muggings, shoplifting, home burglaries, armed robberies, etc. If officials provided statistics or anecdotes about community crime, have students share these.**

   - **Discuss how students become aware of crime problems, i.e., news media, gossip, personal experience.**

2. According to the people you interviewed, what causes crime in your community? What's causing our national crime problem? Is there a difference?

   - **Students should discuss their subjects' answers, which might include:**
     - **Poverty, unemployment and other difficult social conditions cause people to turn to crime.**
     - **Young people are not taught respect for the law; society has become too lax.**

- **Judges have too much discretionary power and are soft on criminals. The courts favor criminal's rights over society's rights.**
- **The court system is too clogged to be useful anymore.**
- **The penalties for crime aren't harsh enough.**
- **Lawmakers don't appropriate enough money to prevention, detection and punishment.**
- **Law enforcement is understaffed, undertrained, underpaid and can't do a good job.**
- **Police set a bad example by discriminating against minority groups or ignoring the law while making arrests.**
- **Ordinary citizens don't do enough to prevent crime; won't cooperate with the police.**

3. The people you interviewed have different perspectives on the crime problem. These differences are reflected in the causes each person identified. Which official's perspective do you most closely agree with? In your opinion, what are the major causes of crime?

   - **Identify a few examples of conflicting opinion and explore why such differences might occur. How are the individuals' views affected by their occupations? Their connections with the justice system?**
   - **Students should state and support their opinions about the causes of crime with reference to the views of interviewed officials.**

4. On the board, compile a list of the solutions suggested by those you interviewed. Include steps to reduce community crime as well as solutions to the national crime problem. Was any one solution suggested by a majority of the officials you interviewed?

   - **Incorporate solutions noted in each of the eight interviews into one master list. Note any duplications and briefly discuss each solution.**

5. Take a vote to determine which solution your class mostly strongly supports. How much do you think it would cost to put this solution into practice in your state?

   - **When your class has selected one solution, work with students to identify the steps or tasks needed to implement this solution in your state and assess an approximate cost for each step.**

6. Imagine you are a member of a state legislature. A survey shows that a majority of the people in your state support the solution chosen by your class. What, if any, action would you take? Why?

   - **As they discuss whether or not they would pass legislation to implement the solution, students should consider the following:**

- **How can legislators be sure that the survey population accurately represents the sentiments of all constituents?**
- **How is the public likely to react to the cost of this solution?**
- **Is the majority necessarily right? On the one hand, the will of the majority must be respected. Legislators who ignore the public's concerns could lose their next election. On the other hand, the majority cannot be expected wholly to understand an issue as complicated as crime. Also, majority opinion is often swayed by irrational "mob feeling."**
- **What if the legislator's personal opinion differs from the survey? Legislators must accommodate their consciences as well as their constituents.**

LESSON TWO

Have students read "The State of State," pages 15-16.

The State of State

Almost four million people live in your state. Many of those who live in rural areas farm their own land. Other rural residents work for a few large corporations which raise hogs, cattle, corn and wheat for the national market. The automobile, textile, clothing and computer hardware industries provide employment for many of State's two million city-dwellers. Because of its beautiful scenery and excellent recreational facilities, tourism also contributes to State's economy.

As a member of the State Assembly, you are aware that crime in State is increasing at an alarming rate. Over the past two years, the number of violent crimes and major thefts in all urban areas has doubled. Last summer a tourist, the teenage son of a Danish diplomat, was killed during a liquor store holdup in Springville, State's largest city. For a few weeks, State's crime problem made national headlines. The crime rate is still rising rapidly, even in rural areas which once seemed quite safe.

Early in the current legislative session, Assemblyperson Alan Parsons introduced a bill to help solve State's crime problem. Following normal procedures, Parsons presented his idea to the Legislative Reference Service which rewrote the proposal in legal language. It was then filed with the Assembly's clerk, who assigned it a number—AB680.

Assembly Bill 680

Provision 1: Any person convicted of a felony shall, upon conviction of a second and separate felony, be sentenced to serve five (5) years in addition to the sentence imposed for the second offense. This penalty is mandatory and will be served without possibility of parole.

Provision 2: Any person arrested for a felony offense shall, upon conviction of a second and separate felony, be sentenced to serve three (3) years in addition to the

sentence imposed for the second offense. This penalty is mandatory, except where the felon was judged innocent of the first offense, and will be served without possibility of parole.

Provision 3: Any juvenile convicted of a felony offense shall, upon arrest for a second and separate felony, be tried as an adult and, upon conviction, sentenced to an adult correctional facility.

Once a bill is numbered, the Speaker of the Assembly assigns it to committee for investigation and recommendations. Those supporting AB680 wanted it sent to the Committee on Justice and Legal Reform, controlled by conservative legislators who would speed the bill along. The bill's opponents, however, pushed for the more liberal Committee on Prisons and Corrections, whose members were sure to table it. In a spirit of compromise, the Speaker sent AB680 to the Committee on Urban and Rural Policies. Though it didn't normally review criminal measures, this committee was politically balanced. It would at least give the bill a fair hearing.

As expected, the Committee's hearings on AB680 lasted for months. Police, prison officials, concerned citizens and even a few former felons testified about what AB680 might do to State's crime rate. Some argued it would protect the public by removing criminals. Others said it would hurt society by undermining important rights. Some claimed it would overcrowd the prisons, causing riots. Others suggested it would frighten criminals into leaving State.

After listening to all the testimony, Committee members considered their options. They must discuss each provision of AB680 and, by majority vote, decide whether to:

- o Pass the provision and send it to the full Assembly with a recommendation for approval.
- o Defeat the provision and send it to the full Assembly with a recommendation for dismissal.
- o Amend it. After strengthening or weakening the provision by changing its wording, send it to the full Assembly with a recommendation for approval.
- o Table it. Unless a majority votes to pass, defeat or amend a provision, it cannot leave Committee and be considered by the full Assembly. By refusing to take action on a bill, legislators can defeat it without risking an official and perhaps unpopular position. This process is called tabling the bill.

As the time for a decision approached, debate grew more heated. What would the Committee decide?

Discuss the following questions with your class.

1. How many people live in State? How do they make their livings?

   - **About 4,000,000 people. State's industries include small farms, agribusiness, auto manufacturing, textiles, computer hardware and tourism.**

2. Describe State's crime problem.

   - **In urban areas, incidence of violent crime and major theft doubled in the past two years in urban areas. The crime rate is also rising in rural areas.**

   - **An important tourist was killed in a violent crime, attracting national media coverage.**

3. How does Assemblyperson Parsons propose to solve the crime problem? Did any of the officials you interviewed recommend similar solutions?

   - **AB680 will extend jail sentences of habitual or career felons, thus keeping them off the streets. Compare this with the solutions noted during interviews.**

   - **Check student comprehension of each provision of the bill.**

     - **Provision 1 adds five years (mandatory and without parole) to the sentence of a person upon his or her second felony conviction.**

     - **Provision 2 adds three years (mandatory and without parole) to the sentence of a person who's convicted of a felony if the person was ever arrested for a felony before, unless the person was judged innocent.**

     - **Provision 3 waives juvenile court jurisdiction for any young person who's arrested for a felony offense if he or she has been previously convicted of a felony. Be sure your students understand that, under normal circumstances, juveniles arrested for crimes (felonies, misdemeanors or acts of delinquency) are treated differently than adults. Juveniles are detained, not arrested; the hearing process for juveniles is more informal than a criminal trial; records are kept private; etc. Juveniles are not normally incarcerated with adults.**

4. AB680 protects the public by removing habitual criminals from society. To do this effectively and efficiently, AB680 ignores some of the rights usually guaranteed to persons accused or convicted of crimes. Which rights?

   - **It could be argued that Provision 1 should be interpreted as a violation of the Eighth Amendment which forbids cruel and unusual punishment. However, the Supreme Court recently ruled against this argument (Rummel v. Texas, 1980) and upheld the states' rights to impose additional or harsher penalties against convicted criminals who could be proved "habitual offenders."**

- In addition, relative to the "second and separate felony" clause in Provision 1, students should note that the law could be used to add five years to the sentence of first-time offenders. For example, a woman with no police record robs a liquor store with a gun. She's charged with two separate felony offenses: armed robbery (for robbing the store) and aggravated assault (for threatening the clerk with a gun). If convicted of both, she could receive a five-year habitual felon sentence in addition to her two sentences for the two crimes, even though it's her first offense.

- Because Provision 2 punishes a person for prior arrests rather than prior convictions, it might be interpreted as a violation of the Fifth and/or Fourteenth Amendments. Students should note that:

  - The provision was included because many persons arrested for crimes are never convicted even when there's enough evidence to assume a guilty verdict. The government often plea-bargains cases, allowing a person arrested for a felony to plead guilty to a lesser offense so as to avoid the expense of a jury trial. Or the government's case might be invalidated by procedural errors under the exclusionary rule. AB680 is attempting to catch and punish habitual felons who escape conviction through such means.

  - The provision assumes a person is guilty until proven innocent. It violates the right to due process by punishing a person for any arrest which doesn't result in an innocent verdict. Many arrested persons never come to trial. What if the government drops the case for lack of evidence against the accused? What if the accused successfully proves a false arrest?

- Provision 3 may violate the Fourteenth Amendment by denying juveniles the equal protection of the law. Some states have passed laws to automatically waive juvenile jurisdiction for people over a certain age (15, 16 or 17) and accused of violent crimes. More usually, decisions about waiver are made on a case-by-case basis and several factors - the seriousness or violence of the crime, the offender's age, school and work record, sophistication and maturity, and previous criminal record - are taken into consideration.

5. Why was AB680, a bill about crime, sent to the Urban and Rural Policies Committee which usually discusses land development? How do legislative committees impact bills? What were this Committee's options regarding AB680?

   - Conservatives wanted to send the bill to the Justice and Legal Reform Committee, where it would be automatically passed. Liberals wanted it sent to the Prisons and Corrections Committee, where it would be automatically killed. The Speaker of the Assembly, who controls such decisions, compromised and sent the bill to a neutral committee.

- **Students should note that bills often end up in the "wrong" committees in both state and federal legislatures.**

- **Committees hold hearings to investigate the merits of bills, consider amendments, and make recommendations to the legislature about passage. Just as no citizen can keep totally informed about all important issues, no legislator can become an expert about all bills. The committee structure allows each legislator to concentrate on a few issues.**

- **Check student comprehension of the four Committee options listed in the text: pass, defeat, amend and table.**

After completing this discussion, have students read "Representative," page 16.

Representative

You and your classmates, acting as members of the Urban and Rural Policies Committee, will determine what happens to AB680. Consider the consequences of the law. Will it help or harm State? How much will AB680 cost and where will that money come from? Like all duly elected representatives, you must look at these questions from two points of view.

- What is your own personal opinion? Often representatives are elected because voters trust their personal decisions. How do you feel about AB680? Is it a step in the right direction? Or should the Assembly concentrate on other solutions?

- What are your constituents' opinions? Each of you was elected by voters in one district, an area with special concerns and needs. Your responsibility as a representative includes consideration of these needs. When your teacher assigns you to a district, read through its description and find out what your constituents think.

These two perspectives may or may not conflict. If they do, you must decide which to support. Which opinion is more practical? What will happen if you vote against your constituents on AB680? Can you find a compromise position?

After identifying your position as a representative, work with others on the Committee, most of whom come from different districts, to hammer out a decision about AB680. Begin by selecting a chairperson, who should follow these procedures:

1. Call the meeting to order and read Provision 1 aloud.

2. Call on each Committee member in turn to discuss his or her position and recommendations.

3. Vote on whether to pass this provision as it stands. If a majority votes "Yes," move on to the next provision.

4. If a majority does not vote "Yes," then vote on whether to defeat the provision. If a majority votes to defeat, move on to the next provision.

5. If there is no majority to pass or defeat the provision, ask Committee members to state and discuss any proposed amendments. Consider these amendments one at a time and vote on each. Alter the text of the provision to reflect any amendments approved by the majority. Then go on to the next provision.

6. If the Committee does not pass, defeat or amend the provision, table it. (Note that Committee members who want to table the provision should vote to defeat all other actions or should abstain from voting.)

7. Repeat these steps as necessary for all three provisions.

8. When its work is complete, the Committee should prepare a brief report noting the action taken on each provision. Be sure to include the full text of any amendments you decided to make.

When students have read these instructions, have them count off 1 through 5, and read the District Description, page 17, which corresponds to the appropriate number. Then divide the class into small groups, making sure that at least one representative from each district is in each group. In addition, each group should consist of an odd number of members. If this is not possible, chairpersons of even-membered groups should vote only to break a tie. When the groups (Committees) have been formed, tell students to select chairpersons and decide AB680's fate by following the procedures noted above.

DISTRICT 1

This is a district of affluent suburbs. Many of your constituents hold important positions in business and society. Having worked their way up, they strongly support the system they've found so rewarding.

The businesses in your district are prosperous and frequently robbed. Your constituents' homes, too, are targets for burglars from less prosperous areas. As theft increases, so do the injuries, rapes and deaths of unlucky citizens who happen to cross the robbers' paths.

Your constituents want action now, but they are concerned about the cost. They do not want their property or income taxes to go up. In addition, several groups want to limit AB680's scope. They don't think it should cover drug offenses, gambling and other victimless or "white collar" crimes.

DISTRICT 2

Your district includes State's major industrial areas and the suburbs where workers live. Your constituents make reasonable livings, but there's never much money left over at the end of the month. Recent economic woes hit your district hard, causing more than 3,000 lay-offs.

In the past, the area's crime was limited to auto thefts, under-age drinking, and an occasional liquor store holdup. Recently, and with alarming regularity, more violent crimes are occurring. Factories report vandalism, arson and robberies. Street muggings have become commonplace.

Your constituents are frightened, but unsure of the best solution. Some believe State needs stronger sanctions against criminals. Many blame their inadequate police force. A large group thinks most of the crime is caused by young people whose parents and teachers have been "too soft." According to these people, State's crime-fighting money would be best spent catching and punishing juvenile criminals.

DISTRICT 3

State University's largest campus is in your district, which also includes some of Springville's residential suburbs and June Lake, an important recreational area. Though the district's crime rate is rising, the problem is not as serious as it is elsewhere. The University's crime, mostly caused by students, is dealt with by the campus security force. Police have beefed up patrols around June Lake and are successfully protecting tourists in that area.

Though constituents from June Lake want State to calm tourists' fears by taking well-publicized action against crime, most voters, especially near the University, think AB680 is unconstitutional. The American legal system, they reason, is based on fair trial and presumption of innocence. AB680 destroys both these important principles. People in your district feel so strongly about this issue that they are threatening to recall representatives who support the bill.

DISTRICT 4

The people in your entirely rural district live in small towns or on isolated farms. Many work for large agricultural companies. Others make a living off the land and the summer tourist trade. In general, your constituents support AB680, but some wonder whether it goes far enough.

Though your district has always had its share of crime, large farms have recently suffered payroll robberies. In the past six months, these thieves have netted almost a half million dollars. All evidence suggests that highly-organized urban gangs are expanding their operation. Local police think these gangs are also responsible for the increase in rapes and assaults in your district.

Your constituents believe that the only way to stop the armed robberies is to capture those responsible and punish them harshly. Some residents think that unhelpful city authorities are interfering with local police efforts to handle this task. Others threaten to take matters into their own hands.

DISTRICT 5

Your constituents live in the inner city and, for the most part, they are poor. Though some are on welfare, most work at jobs which pay only

the minimum wage. Since there is little industry in the district, most workers must commute long distances.

As the crime rate rises in other areas, it is dropping in your district. This may be due to several community-organized programs which encourage citizen participation in law enforcement and help troubled juveniles straighten out their lives. In spite of improvements, your district still leads the state in homicides.

For a number of reasons your constituents strongly oppose AB680. First, they feel that police often harass poor people without just cause. AB680 could turn these false arrests into prison sentences. Second, many juveniles in your district have had at least one brush with the law. Your constituents don't want any of their children locked up with adults because of previous unfortunate incidents.

Finally, your constituents feel that the programs they've established are reducing crime and would like State to try these programs in other districts. Instead of addressing the basic social and economic causes of crime, they fear AB680 will create tension by setting the people against the police.

LESSON THREE

Work Through "On the Floor," page 18, with your class.

On the Floor

In its report on AB680, the Urban and Rural Policies Committee recommended that the full Assembly pass Provision 1 and an amended version of Provision 3. It tabled Provision 2. The bill then read:

Provision 1: Any person convicted of a felony shall, upon conviction of a second and separate felony, be sentenced to serve five (5) years in addition to the sentence imposed for the second offense. This penalty is mandatory and will be served without possibility of parole.

Provision 2: (Formerly Provision 3) Any juvenile convicted of a felony offense shall, upon conviction of a second and separate felony, be sentenced to an adult correctional facility.

The Committee's report upset Assemblyperson Parsons. He felt Provision 2 was needed to counteract plea bargaining and the exclusionary rule. Since, by tabling the provision, committee members avoided the issue, Parsons decided to force a public showdown. He began negotiating with other legislators, offering to support their favorite bills if they would back the tabled provision. He asked the public to pressure unsympathetic representatives. When AB680 finally reached the top of the Assembly's agenda, Parsons was ready.

The bill was read to the Assembly. Immediately, someone tried to block Parsons by moving to close debate. This motion was defeated by a

large majority. Parsons took the floor and introduced a motion to amend AB680 by reinserting the original Provision 2. A member from District 1 seconded. The long and often angry debate began.

1. Compare the Committee report above with the versions of AB680 recommended by Committees in your class. Which of these is your district most likely to support?

   - **Have each Committee read its report to the class. Compare and contrast these with each other and with the version in the text, examining any significant differences.**

   - **Ask one student from each district to identify the report most likely to satisfy his or her constituents. Ask others from the district to respond to this choice.**

2. In your personal opinion, which is the best version of AB680? If you support a version other than that passed by your Committee, what could you have done during the session to insure a report more in line with your views?

   - **As students discuss this question, have them identify their personal perspectives about the various reports and examine their performances during the activity. Identify avenues of improvement, such as more direct argument, compromise and persistence. Note and discuss the methods actual legislators use to achieve their goals in a group context, including party pressure and the trade-offs of support Parsons uses in the text.**

3. Since, according to Assembly rules, each member may only speak once during a debate, legislators must choose their arguments carefully. What one argument would you contribute to the debate over the Parsons Amendment? Should convicted felons be punished for prior arrests? Why or why not?

   - **The class should identify a balanced sampling of arguments on both sides of this question, including:**

     - **Yes. When a arrest does not result in a conviction, it's usually because of a procedural error, not because the person is innocent. Police rarely arrest innocent persons. Too many felony arrests are plea-bargained down to misdemeanors or thrown out of court by lenient judges; these escape routes must be closed. In practical terms, the second conviction probably means that the person was guilty of the first offense. Though an innocent person might be arrested once by mistake, it's highly unlikely that he or she would be arrested twice by mistake and then convicted by mistake. Most crimes are committed by a relatively small number of people who are "bad"; because the justice system is in such bad shape at the moment, arrest records are the best way of identifying these people so they can be removed from society.**

     - **No. A person is innocent until proven guilty; an arrest is not proof of guilt; therefore, people should not be punished for**

arrests, even if they get into trouble with the law more than once. The provision could easily hurt a large number of innocent people. The provision is unnecessary; sooner or later, career criminals will be convicted of two felonies and can be punished under Provision 1. The provision is unconstitutional and ultimately will be voided by the courts; passing it only opens the State to expensive lawsuits which it will lose.

4. After a thorough airing of the issue, the Speaker called the question: "It has been moved and seconded that AB680 be amended to include the language originally introduced as Provision 2. All in favor?" Still acting as your district's representative, how would you vote on the Parsons Amendment?

   - **Take a class vote on the Amendment.**

5. Though the Assembly debated several other amendments, none were passed. Finally, it was time to consider the bill as a whole. "It has been moved and seconded," announced the Speaker, "that this Assembly approve Bill 680. Clerk, call the roll." Would you vote to pass or defeat this bill?

   - **Ask a student to read the entire bill aloud. If the class passed the Parsons Amendment, be sure to include the original Provision 2.**

   - **Then, have each student in turn stand, state the district he or she represents and announce his or her vote. Use a class list or the blackboard to keep a tally of the votes. When the roll has been called, announce the decision.**

Have students read "State's Law," page 18.

State's Law

Assume for a moment that the Assembly defeated the Parsons Amendment and passed the Committee version of AB680 intact. As complex as the legislative process has been thus far, the bill is not yet a law. It still has several hurdles to face.

Like the federal government and all states but Nebraska, State's legislature is bicameral (divided into two chambers). Usually, one body passes a law and presents it to the other for approval. However, when confronting issues of great public concern, the Senate and Assembly often develop separate versions of a law simultaneously. As the Assembly debated AB680, the Senate passed its own crime bill, SB (Senate Bill) 112.

Though the two bills were surprisingly similar, SB112 did not apply to juveniles. The Senate believed that putting young people in prison with adults only increased the likelihood that they would become habitual offenders. Because of this, the second provision of SB112 forbade jailing young people with adults and specifically exempted juveniles from extended sentences for second convictions.

The Representatives and Senators appointed to the Joint Conference Committee had a difficult time ironing out differences between AB680 and

SB112. Both sides felt that juveniles greatly contributed to State's rising crime rate, but neither accepted the other's solution. Assemblypersons wanted to remove criminals from society at an early age, before they committed major crimes. Senators believed AB680's sanctions against juveniles were ineffective and unfair.

This stalemate threatened the entire bill. To keep it afloat, the Joint Conference Committee agreed to drop all mention of juveniles. The subject would be left open for future legislation. The bill reported out of the Joint Committee was, in essence, the first provision of Parsons' original proposal.

Senate passage of the joint version was relatively easy, but many Assembly members felt they had lost ground in the compromise. Though Parsons denounced it as "gutless," recommending it be returned to Committee, the bill squeaked through the Assembly by three votes.

Though he questioned AB680's effect on State's overcrowded prisons, Governor Stanford's initial reaction to the bill had been positive. By the time it reached his desk, the governor was less enthusiastic. Public response, measured in the letters and telegrams sent to the Executive Office, was three to one <u>against</u> the measure. Many citizens asked the Governor to stop the bill on grounds that it was unfair or unconstitutional. An equal number, however, seemed to feel it wasn't hard enough on criminals. They too urged the Governor to exercise his veto.

After consulting with his staff, Governor Sanford decided that public dissatisfaction with the law, for whatever reason, was too strong. He vetoed the bill and returned it to the legislature. If Senators and Assemblypersons were committed to the bill, they could override his veto, an action requiring two-thirds of the members of each house. If they did so, the Governor reasoned, the law would be their responsibility.

Discuss the following questions with your class.

<u>Response and Responsibility</u>

1. Legislative leaders are confident they can marshal the support to overturn the Governor's decision. Will such a measure pass in the Assembly? As a State representative, would you vote to override the veto?

   - **Take another class vote on this issue. In order to override, the measure must pass by a two-thirds majority.**

2. What do you think of State's process of making laws? Is it efficient? Does it save or waste time, energy and money? Is it effective? Does it produce good, enforceable laws? Is it fair? Does it allow all interested parties an appropriate voice in the proceedings?

   - **As students discuss this question, review State's legislative process and compare it with that used in your state.**

3. Was Governor Sanford acting responsibly when he vetoed the bill? Why or why not?

- **While discussing this question, review the executive role in the legislative process.**

- **The Governor was behaving responsibly by supporting the public's expressed opinion. On the other hand, since he negated the legislature's decision without offering an alternative, his decision wasn't very helpful.**

4. How responsibly did you behave during the Committee session? During the floor votes? Did you represent your district's majority point-of-view? Did you assert your personal opinion? If there was a conflict between these two perspectives, which did you support?

   - **As students discuss their performances, explore the choices of those who voted against their personal opinion or constituents' wishes. Which perspective should take priority when there is a conflict between the two?**

   - **Raise the issue of what constitutes responsible representation. How responsive should representatives be? Are they leaders, forming public opinion, or followers, obeying the public?**

5. Many representatives complain that they are prey to "one-issue" voters. Such voters don't look at a legislator's total record but focus on the stand taken on a single controversial subject such as abortion, the death penalty, or minority rights. Do you think voters behave this way? Is it fair? Why or why not?

6. In some states, through a legislative process called a referendum, the general public can write its own laws. Proponents circulate a petition about a law they'd like to see adopted or changed. If they get enough signatures, the proposal is put on the ballot and the electorate decides the issue. Is this more fair or efficient than State's legislative process? Why or why not?

   - **Students should note that:**

     - **Because the referendum process is slow and unwieldy, it cannot be used for more than a few laws each year.**

     - **In a referendum, voters can only approve or disapprove a law. They cannot debate its content, change wording, offer suggestions for improvement, etc.**

     - **The referendum process is more directly democratic than a legislature's process.**

7. Today's decision about the override was the Assembly's final action on AB680. As soon as the session was over, representatives were swamped with reporters. Prepare a brief statement for the press. Explain what happened in the Assembly session. Justify the actions you took or didn't take throughout the legislative process. State your opinions about the results of today's vote. If used properly, the press provides an excellent opportunity to communicate directly with the voters in your district.

   - **This activity is intended as a homework assignment.**

Unit 4

The Price of Protection

Overview

Lesson 1: Student Edition, page 20, Instructor's Manual, page 57

"Citizen Crimefighters"--Reading about citizen participation in crime control
"Police Participation"--Classroom presentation involving law enforcement officer

Lesson 2: Student Edition, page 22, Instructor's Manual, page 61

"The Mayor's Speech"--Reading about an executive effort to involve citizens in crime control at the local level
"Groundwork"--Activity in which students assess crime-control proposals
"Proposals for 108F Grants"

Lesson 3: Student Edition, page 24, Instructor's Manual, page 65

"The Reception"--Role play about informal political influence
"Executive Action"--Debriefing discussion

Purpose

This unit was designed to complement instruction about the executive branch of government and/or government at the local level. Its goals are:

- To identify and assess several crime-fighting activities in which citizens can participate;
- To describe and demonstrate one aspect of fiscal decision-making by the executive branch at the local level;
- To describe and demonstrate the lobbying process.

Objectives

After completing Unit 4, students will be able to:

1. Recall and describe a minimum of three actions that citizens, working individually or in groups, can take to reduce crime in their communities.
2. Identify and describe at least one factor which should be considered when allocating government money for a proposal or program.
3. State and defend a personal opinion about the best way citizens can involve themselves in crime-fighting efforts in their communities.

Preparation

- Students should read the section of their regular textbook which explains local government and the power and structure of the executive branch.

- You will need:
  - Sufficient copies of THE CRIME QUESTION, Student Edition, for distribution to students in class.
  - To arrange a classroom visit from a law enforcement officer.
  - Blank name tags for all students and any other props to enhance "The Reception" activity.

LESSON ONE

Lesson One includes a class discussion with a law enforcement officer about the proper role of citizens in crime control and prevention. In preparation for that visit, have students read "Citizen Crimefighters," pages 20-21.

Citizen Crimefighters

Thus far, we've focused on the privileges and prerogatives we claim from the government: our individual rights to fair treatment, our group rights to security and safety. Yet all rights carry with them certain obligations. Clearly, the government cannot stop crime without some cooperation on our part, but in what way should we help and to what extent? As citizens, what are our responsibilities for crime control?

Common sense tells us that, at the least, citizens should report crimes to the police and cooperate if asked to aid an investigation or testify in court. Realistically, though, even these basic obligations often go unmet. In one survey, the U.S. Census Bureau discovered that half the crimes committed in New York City were not logged with the police. Two-thirds of the crime in Los Angeles and Chicago went unreported. In Philadelphia, police were told of only one crime in five.

A standard excuse for not reporting a mugging or burglary is that "the police can't do anything anyway." Why waste the time waiting for officers to arrive and filing a report, the victim reasons, when the chance of catching the thief is so slim? Other people simply mistrust the police or the justice system. They've heard stories of rape victims subjected to humiliating questions, or bereaved relatives watching in horror as a murderer walks free on a technicality. Finally, many crimes may go unreported because the victims and witnesses fear reprisal. Street gangs and organized syndicates have long played on this fear to great advantage.

To address the problem, many communities have started "Crime Hotlines." A citizen with information about illegal activity can call a well-publicized phone number. The informant is given a code number to protect his or her identity and the information is passed on to police. If it leads to an arrest or conviction, the informant may be rewarded. As a variation, a local T.V. station or newspaper publicizes a "Crime of the Week" and offers to similarly protect or reward informants who can solve that crime.

The right to confront an accuser is one of our basic legal beliefs. Because of this, anonymous tips cannot be used in court unless the

informant is willing to go public. Still, secret information can guide police to evidence which might lead to arrest and conviction. To many people, programs which protect witnesses' identities are a practical way of overcoming very real fears. Others are not comfortable with secret accusations which, even if only used by police, might lead to false or malicious charges.

Cooperation with law enforcement is a primary step. Is it enough? Some citizens have taken a more active role by learning to protect themselves from criminal attack. Self-defense and martial arts courses are increasingly popular. Some people equip themselves with mace, a disabling gas that, in several states, one must be trained and licensed to carry. Others buy guns.

In the gun control debate, those who support continued easy access to weapons use the need for personal protection as a key argument. A monthly column in the National Rifle Association magazine makes heroes and heroines of people who shoot attackers. The brochure for a firearm class offered by Solutions, Inc., of New Orleans, states that learning to shoot is "a skill for our time." "The last thing on my mind is to kill," said one graduate, "but if I have to, I will."

Fear of violent crime is a real factor in American life. A recent Gallup poll found that 45% of us were afraid to walk alone at night. Three-quarters of the public believed criminals were more violent than five years before. Unfortunately, when coupled with the wrong kind of citizen action, this fear can produce dangerous and deadly results.

Vigilantes are people acting under no authority but their own will who accuse, capture and often punish other people. This type of citizen intervention is woven through America's history. During the Revolutionary War, people loyal to the English crown were regularly lynched as criminals and traitors. In fact, the word lynch, which means to hang someone without the usual formalities, comes from the name of a Virginian, Colonel Charles Lynch, who masterminded a particularly bloody vigilante outbreak in the 1770s.

Some historians differentiate between destructive and constructive vigilante movements. The Regulator-Moderator War is a good example of destructive vigilantism. In 1840, when Texas was an independent country, Shelby County was plagued by horse and slave thiefs, counterfeiters, murderers and a corrupt government. A group of vigilantes called Regulators organized to cope with these problems. Taking his role seriously, their leader wore a military uniform.

The Regulators were rapidly infiltrated by criminals. Soon an opposing group, the Moderators, was formed. They too were quickly corrupted. The original reason for forming these groups was all but forgotten in the feud which developed between them. In 1844, the patterns of vengeance and excessive violence erupted in an all-out battle. Finally, the Lone Star Republic army marched into Shelby to stop the violence.

Groups formed in response to a specific outburst of criminal activity which moved quickly to restore order and then disband are labeled constructive. Another Texan incident demonstrates this category.

Johnson County cattle ranchers, used to grazing their herds on the open range, resented an influx of fence-building homesteaders. In 1892, after accusing the settlers of rustling, the ranchers imported a trainload of heavily armed gun fighters. Though supposedly hired to protect the herds, the gunmen quickly went to work at their real job and murdered two settlers. Outraged, the homesteaders formed a Regulator group, rounded up the invaders and held them until federal troops arrived.

Constructive vigilante acts, however, are few and far between. Though disguised as means of assuring law, order and justice, many cases of historical vigilantism were, at root, motivated by racial, ethnic or political prejudice. The famous San Francisco Vigilance Committee of the 1850s was formed to combat a corrupt city government primarily kept in power by poor Irish Catholic workers. As a result, the merchants who joined the Committee showed little mercy to people who were Irish, Catholic or unskilled workers. Affected by the ethnic tension in Los Angeles in 1871, civic leaders used the hunt for a white man's murderer as an excuse to hang 19 innocent Chinese. In the southern states between 1882 and 1903, there were 1,985 documented lynchings of black men. That's at least one death every four days.

On the whole, civilian crime fighting groups are much less violent today. Stories about angry neighbors tracking down and beating up a child molester still occasionally make the headlines. Far more common, however, are reports of citizens organizing to protect their neighborhoods with watch programs or community patrols.

One such association is the Guardian Angels. Founded in 1979 by Curtis Sliwa, a high school dropout in his early twenties, this group of about one thousand young people nightly patrols the streets and subways of New York City unarmed. Often, their presence alone is enough to instill security and prevent crime. All Angels, however, are trained in the martial arts and will intervene if they see a mugging or rape in progress. The group, which is widely accepted by New Yorkers, claimed credit for over 100 citizen arrests in its first two years of operation. In 1981, their volunteer approach to crime control was expanded to several other eastern cities and Los Angeles with mixed results.

Affluent communities often rely on hired security forces rather than volunteers. The patrol cars of private guard companies, frequently staffed with armed personnel, are a fairly common sight in wealthier suburbs across the country. Many neighborhoods, however, depend entirely on their own resources to staff anti-crime efforts. Such programs are called neighborhood watches.

Typically, neighborhood watches are organized to prevent burglaries. Area residents meet with police to discuss burglars' tactics and specific ways to safeguard their homes. They learn to recognize suspicious behaviors and build networks for reporting criminal activity. As neighbors accept responsibility for watching each others' homes as well as protecting their own, successful burglaries become more rare. A well-organized neighborhood watch program in Detroit reduced burglaries by 62% and cut the total number of all crimes in half.

Locking cars and homes, avoiding crime-prone areas and otherwise limiting criminal opportunities are all positive steps people can take to

prevent crime. Cooperation with law enforcement is clearly another critical factor. Individuals and groups who learn to protect themselves or guard others may also help. By virtue of our form of government, however, Americans must accept a broader responsibility for fighting crime. To attack crime at its roots, to identify and eliminate its causes, full and active citizen participation in the democratic process is necessary.

The discussion with a law enforcement officer outlined in "Police Perspective" will give students a practical complement to the information in the text. General information about the use of resource people is provided on page xi IM. If you wish, have students make the necessary arrangements. The officer should be specifically requested to make a brief presentation about local programs which involve citizens in crime prevention and to participate a class discussion. You may want to give the officer a copy of the questions listed below in advance.

Police Perspective

Law enforcement agencies, not private citizens, hold the primary responsibility for crime control in our society. Find out what the officers in your community think about citizen anti-crime efforts by inviting one to speak to your class. Ask the officer to identify the crime problem in your area and describe any programs which enlist civilian help in fighting crime. After the officer's presentation, ask him or her to discuss the following questions.

1. Some people don't report crimes for fear of what might happen to them if they get involved. What actually does happen to witnesses and victims when police arrive on the scene of a crime? What usually happens to them at the station? In court?

2. In general, do you find that witnesses and victims cooperate with police? What can be done to increase such cooperation?

3. Law enforcement agencies often receive large numbers of unnecessary or inappropriate phone calls. When should a person call the police? What criteria does your department use to decide which calls it will respond to first?

4. Does your department encourage civilians to take self-defense courses? To learn how to use mace or other weapons? Why or why not?

5. In your opinion, are there circumstances in which citizens should intervene to stop criminal activity? If so, what?

6. What kinds of citizen cooperation and assistance would your department most appreciate? How and to what extent should citizens get involved in fighting crime?

LESSON TWO

In Lessons Two and Three, students will examine six proposals to involve citizens in the fight against crime and take part in a role play which demonstrates lobbying and administrative decision-making. Begin by having students read "The Mayor's Speech," page 22.

The Mayor's Speech

(Transcription of a speech delivered at the Lancaster Business Club's monthly breakfast meeting.)

Eleven years ago, when my administration took office, Lancaster seemed a peaceful little town, almost boring. We had a stable population--little growth, little change. Those of us who grew up here seemed quite satisfied with our lives. But behind that placid exterior lurked a number of real problems--problems we thought only affected other, bigger cities, problems like economic stagnation and urban decay.

I'm pleased to report that Lancaster is bustling today. Our population is again growing. Our standard of living is going up. In the last year alone, we've attracted three new major industries, each bringing money and jobs to our city. While it would be nice to attribute these successes entirely to my administration, the facts just don't support that claim. Each and every member of our community has worked hard to bring about this turnaround and we all deserve to share the applause.

But while we're congratulating each other, it would be wise to remember that Lancaster still faces a number of problems. There is no need to ask which now poses the greatest threat. Each and every one of you has felt its effects. Some of you are spending fortunes replacing locks and broken windows. Others can no longer get theft or fire insurance. We all experience the atmosphere of tension. I dare not mention the other costs--the deeply personal losses--that some of you have had to bear.

I am speaking, of course, about our increasing troubles with crime. In the past six months, Lancaster police have logged 104 robberies, 142 assaults, 23 rapes and 5 murders. Ladies and gentlemen, from last year to this, crime in our city has increased 37%.

Downtown's been hit the hardest. After dark, our business district is almost as dangerous as a New York subway. Our residential areas aren't much safer. Do you know that four of our homes are burglarized each and every day?

Before I continue, let me make one thing perfectly clear. Lancaster is committed to solving this problem democratically. Our courts are strong. Our laws are good. Our justice system is one of the best in the world. The problem does not lie there. Let me be blunt, ladies and gentlemen. The root of our crime problem is that we can't catch all the criminals.

I do not, by this remark, intend to disparage our police. They are performing exceptionally well in spite of their difficult, often impossible task. There is no point in even discussing blame. Our task is, rather, to find a solution.

Fortunately, we are not alone. Many other communities around the country face this same difficulty. The federal government has responded with a new program, called 108F. Under this program, we will get $70,000 a year in federal monies to be spent entirely on community crime control. In today's economy, that isn't much. But it is a start.

I urgently solicit your suggestions about how these funds should be spent. I'm handing out copies of the six proposals we're considering. What do you think of them? Please, drop by my office any time to discuss your opinions. I remind you that we solved our economic problems by working with each other. If we all stick together, Lancaster can lick this one, too.

Select a student to play the Mayor. (If you wish, have the class elect this person or take the role yourself.) The Mayor should then choose five other students to act as his/her staff. Have this group read and complete their "Groundwork" instructions on page 23. (You may want each staff member to take a specific role: Police Liaison, Fiscal Manager, Media Consultant, Campaign Manager and Liaison with the Downtown Business Community. If so, assign these roles a few days in advance so students can research their functions.)

Divide the rest of the class into six groups of approximately equal size and assign each an identity: Lancaster Police Protection League, Lancaster Chamber of Commerce, Urban Youth Association, Neighborhood Watch Coalition, Citizens for Public Safety and Channel 14 T.V. Station. Ask these groups to read and complete the "Sponsoring Groups" instructions, page 23 of the "Groundwork" section.

Proposals for 108F Grants

Program #1: Police Aides

Sponsoring Group: Lancaster Police Protection League
Cost: $36,400

Through this program, the Protection League will provide each team of police officers patroling the downtown area with one half-time assistant for six months. Aides will be students of police science or public administration at local colleges. They will help with secretarial work, freeing officers to spend more time on patrol. The budget includes administration costs and money for aides' salaries. It will buy about 6,000 hours of patrol time.

Program #2: Force One Security Patrol
Sponsoring Group: Lancaster Chamber of Commerce
Cost: $48,360

This program will provide a two-person private security patrol in the downtown business district during non-business hours (from 5:00 p.m. to 8:00 a.m. on workdays and 24 hours a day on weekends). The Force One Security Agency will hire and equip the patrols. The budget includes salaries, expenses and transportation costs for six months.

Program #3: Self-Defense Classes

Sponsoring Group: Urban Youth Association
Cost: $13,500

This one-year program will provide free lessons in karate and other forms of self-defense to Lancaster residents. Budget includes instructor's fee and classroom rental for four lessons a week for one

year. The Urban Youth Association will publicize availability of lessons at no cost.

Program #4: Crime Prevention Seminars

Sponsoring Group: Neighborhood Watch Coalition
Cost: $22,525

The Coalition will sponsor two two-hour crime prevention classes each week for one year. Conducted by police officers, these classes will be open to the general public free of charge. Discussions will focus on techniques that private citizens can use to reduce criminal opportunity. Budget includes officers' salaries, publicity expenses and money to print booklets to be used in the seminars.

Program #5: Citizenwatch

Sponsoring Group: Citizens for Public Safety
Cost: $11,350

Budget will buy equipment for Citizenwatch, a group of volunteers who patrol downtown commercial and high-income residential areas at night. In the past six months, this group has captured 46 suspects. Because of the group's methods, however, only half were caught with enough evidence to warrant a trial. The budget will buy 40 citizens band radios and 20 walkie-talkies to improve communications between patrols and the Police Department. This should result in more convictions, since police officers will be able to get to the scene before CPS members have unwittingly destroyed evidence.

Program #6: Crimescope Hotline

Sponsoring Group: Channel 14 T.V. Station
Cost: $24,955

This one-year program will provide a 24-hour telephone line and $25,000 in reward money for a secret witness program. Informant identities will be coded and information relayed to police for further action. Total budget will be $49,910, but Channel 14 has offered to raise half the money privately.

Groundwork

Sponsoring Groups

In the next few days, the Mayor and his staff will allocate, or "divide up," the federal 108F money. As a member of a Sponsoring Group, you would like to make certain that at least part of that money is spent funding your proposal. How can you convince those in power to support your choice?

1. Carefully read through your proposal. What are its good points?
   - o Why will it help solve Lancaster's crime problem?
   - o Why is it a bargain or "money well spent"?
   - o What segments of the community will it serve? Why are these interests important?

Select the three arguments which best promote your proposal and write them down.

2. Next, discuss each of the other proposals. Why shouldn't they be funded? Pick the best argument against each proposal to add to your list.

3. Finally, create a slogan--a simple statement which clearly expresses your position--for your group.

Mayor's Staff

As a member of the Mayor's administrative staff, you research issues, make recommendations about city policy and help the Mayor handle the public. Because staff backgrounds and opinions vary widely, the Mayor often meets with you to hash out important issues.

The Mayor now wants your advice about how to allocate the federal anti-crime money. Which of the proposals are most deserving? Read through the list on pages 22-23. Working with your group, rate them according to:

- Effectiveness. Which programs will help solve Lancaster's crime problem? Assign each a number from 1 (best idea) to 6 (worst idea).

- Value. Assign each a number from 1 (most delivered for the least amount of money) to 6 (least delivered for the most money).

	Effectiveness	Value
Police Aides	_____	_____
Force One Security Patrol	_____	_____
Self-Defense Classes	_____	_____
Crime Prevention Seminars	_____	_____
Citizenwatch	_____	_____
Crimescope Hotline	_____	_____

LESSON THREE

The "Reception" activity simulates informal political processes and explores how community government is influenced by special interests. You may want to ask students to bring appropriate props--for instance, refreshments--to class.

Begin by asking a spokesperson from each Sponsoring Group to introduce its members, state its slogan, and briefly describe the proposal it supports. Have the Mayor and his/her staff introduce themselves. Give each student a name tag to fill out and wear during the activity so that others can easily identify his or her group affiliation.

After these introductions, have students meet in their groups and complete the appropriate instructions listed under "The Reception," page 24.

The Reception

Sponsoring Groups

This morning, you heard a rumor that the federal government is pressing for a quick decision about the 108F money. The Mayor and his/her staff will make a final decision by the end of the day. If you want to influence that decision, you must act quickly.

At noon today, the City of Lancaster is opening a new recreation center at Plummer Park in the downtown area. After the dedication ceremony, the public has been invited to a reception which everyone from the Mayor's office will attend. This reception may be your last chance.

Your goal at the reception is to convince the Mayor and his/her staff that your proposal should be funded. To do this:

- o Present your best arguments.
- o Keep your pitch brief and to the point.
- o Ask for a firm commitment in support of your proposal.

Time at the reception is limited. Before it begins, plan your strategy.

- o Should you concentrate on presenting the reasons why your proposal is best? Or on attacking the other proposals?
- o Should everyone in the group talk with as many staff members they can? Or should each group member focus on a different person?

Remember, this is a social occasion. Bad manners and overly aggressive behavior may prejudice staff against you. Avoid arguing or interrupting conversations. See how subtle you can be.

Mayor's Staff

Though you've ranked the proposals, you haven't yet allocated the $70,000. Should you spend that money on the one or two most effective programs? Or should you fund several less expensive ones? Will the proposals you rated highly serve a broad range of community interests? Should you fund programs which will help only one segment of the population?

This morning, the Mayor received a phone call from the U.S. Department of Justice. They want Lancaster's 108F budget immediately. You must make a final decision by the end of the day.

At noon, the City is opening a new recreation center at Plummer Park in the downtown area. For political reasons, you must all attend the public reception which will be held immediately after the ceremony. However, the Mayor has asked you to stay for only fifteen minutes and then meet to finalize your decision about the anti-crime proposals.

Information about the federal demand for a quick decision has been leaked to citizen activists. Since many are likely to attend the reception, take this opportunity to:

- o Give feedback. Inform citizens of the concerns about their proposals raised during the staff discussion. Ask them to respond to these concerns by giving you arguments to take to the next staff meeting. Communicating with people will keep them involved and insure their support.
- o Speak to people from as many groups as possible. Those vying for your attention may resent your spending too much time with any one person or group.
- o Make friends for the Mayor. Remember, this is a political function. Be polite, listen carefully, but don't make any promises you can't keep. If you back out of a commitment, the Mayor may lose votes.

When groups have discussed their instructions, begin the role play. At the end of the alloted 15 minutes, remind the Mayor to end the reception and assemble his/her staff at the front of the class for their meeting. Students from Sponsoring Groups should observe this meeting but may not participate.

Tell the Mayor's staff group that it is now time to allocate the federal money. They can fund as many or as few proposals as they like, but the total award cannot exceed $70,000. Each staff member in turn should identify and explain his or her recommendations. Staff should feel free to comment upon and challenge each others' choices. The Mayor should both chair the meeting and participate in the discussion. When it is complete, the Mayor should make a final decision and write it on the board.

Executive Action

1. Examine the Mayor's choices. Do they serve a broad range of community interests? Is the federal money "well spent"? If your own mayor or city manager made a similar decision, would you support it? Why or why not?

   - o **Discuss the Mayor's selection according to the above criteria.**

2. The Lancaster City Council can, by a two-thirds majority, veto the Mayor's budgetary decisions. If you disagreed with the Mayor's allocation, what further action could you take? In your community, what can citizens do if they disagree with the mayor or city manager's decisions?

   - o **In Lancaster, citizens could lobby the city council persons, speak at council meetings, etc.**
   - o **Discuss this question as it applies to your community.**

3. Is the process by which the Mayor's office made a decision about 108F funding fair? Why or why not?

   - o **Yes, it's fair. People had a chance to give some input. The Mayor and his staff have to take responsibility for the final decision. It does reflect the feelings of some of the people. It's a necessary compromise.**

- o **No, it's not fair. It was made by non-elected representatives. It's a "behind closed doors" decision. It depends too much on the individual aides' feelings. The lobbying process is too informal. People without access to staff members cannot get their views across.**

4. In this role play, you experienced executive bureaucracy in action. How well do you think it works? Did the Mayor's staff do enough to promote citizens' recommendations? How could they be made more accountable to the public?

   - o **As they discuss this question, students should note that, when selecting someone to fill any executive office, voters elect not only a candidate but his or her staff.**

   - o **If you wish, use this opportunity to discuss civil service employees as well as executive staff employees.**

5. The amount of influence a special interest group wields is determined by many factors. Some--for instance, members' presentation skills--were probably observed during "The Reception" activity. Which Sponsoring Groups were most successful during the activity? Why? What other factors might make certain special interest groups more successful than others?

   - o **Examine the final allocation to determine which Sponsoring Groups were most successful. With input from both citizens and staff, discuss each group's behavior during the simulation. Were the successful groups more cooperative, more aggressive, more polite? Why were their arguments more convincing?**

   - o **Some factors (not addressed during the role play) which contribute to the success of a special interest group are:**

     - o **The amount of money it is able to spend, either to influence the public or to "wine and dine" government officials.**

     - o **The number of votes or potential votes it can control, for instance, its representation of a potential political bloc such as women, senior citizens or a specific ethnic group.**

     - o **Its representation of an industry or labor organization important to the local, state or national economy.**

     - o **Its ability to use the media to its own advantage.**

     - o **Members' personal friendships, business or familial relationships with government officials.**

     - o **The group's actual representation of the public's expressed opinion.**

   - o **Encourage a discussion of whether or not students think special interest groups should be able to exert more influence because of each of the identified factors. Be sure both sides of this issue are**

aired. For instance, if a group is not allowed to protect its own interests to the best of its abilities, who will? On the other hand, is it fair that a small but wealthy group is more able to exert informal influence than a poorer group of similar size? Further, is there a difference between special interest groups whose power is based on their wealth and those whose power comes from a broadly-based membership? If so, what is it?

- Finally, if students feel that special interest groups exert an unfair amount of influence, ask them what rules or laws they would establish to rectify the situation without denying citizens, as individuals or in groups, adequate and appropriate representation.